

WIRELESS FACILITIES CONTRACT

THIS WIRELESS FACILITIES CONTRACT ("CONTRACT") is made as of the 12th day of May, 2017, ("Effective Date") by and between the CITY OF PALM COAST, FLORIDA, a municipal corporation of the State of Florida, whose mailing address is 160 Lake Avenue, Palm Coast, Florida 32164, hereinafter referred to as "CITY", and DIAMOND TOWERS IV LLC, a Delaware limited liability company authorized to do business in the State of Florida and with a mailing address at 820 Morris Turnpike, Suite 104, Short Hills, New Jersey 07078, hereinafter DIAMOND TOWERS IV LLC shall be referred to collectively as the "CONSULTANT", whose Federal I.D. numbers is 36-4751274.

In consideration of the mutual promises contained herein, the CITY and the CONSULTANT agree as follows:

Section 1. Consultant's Responsibilities

This CONTRACT involves all property owned or controlled by the CITY and the Flagler County School District (the "Property") excluding Old King's Elementary and Palm Coast High School ("School District Property").

I. Phase I – MARKETING AND DEVELOPMENT

The CONSULTANT shall:

a. Perform all tasks outlined in CONSULTANT'S Response to RFP IT-16-01 under "Phase I", which is attached hereto as Exhibit "A" and made a part hereof. In the event of a conflict between the terms of the RFP or Response to RFP and this CONTRACT, the terms of this CONTRACT shall control.

b. Perform an inventory of all potential CITY and Flagler County School District Wireless Communication Facility sites and submit a report on the contemplated marketability of the inventoried sites.

c. Develop a CITY-wide long-term Wireless Master Plan for wireless communications operators or wireless service providers ("Operators"). "*Wireless Master Plan*" means a Plan to be developed by CONSULTANT to facilitate marketing of CITY's Property, whose purpose is to maximize CITY's income, to identify key areas of multiple wireless broadband service provider coverage needs, and to prepare those proposed sites for the installation of Wireless Communication Facilities after a mutually acceptable agreement for the use thereof has been executed between CONSULTANT (or the CITY as applicable) and an Operator. (For example, if there is a colocation on a CITY Tower (as defined below), the agreement may be between CITY and Operator.) As used herein, "Wireless Communication Facilities" shall refer to a tower, structure, light pole, rooftop, or other attachment situated or installed on the Property identified by the CITY as suitable for use by an Operator to provide wireless telecommunications services.

d. At no cost to CITY, Diamond will perform a radio frequency propagation analysis on all existing CITY sites (as reflected on Exhibit "B") with wireless infrastructure and identify suitable and available CITY (and potentially other) sites for wireless development which CITY could consider for inclusion into the Wireless Master Plan.

For all CITY existing co-location sites, CONSULTANT will review available documentation including existing leases between CITY and Operators, structural analyses and engineering drawings. CONSULTANT will conduct a field visit and perform an equipment and rent audit at each existing co-location site on CITY property to ensure all Operators with leases on CITY property are in compliance with the terms and conditions of their respective lease agreements. In the event an Operator is not in compliance with the relevant documentation, CONSULTANT will make recommendations to CITY as to the appropriate steps in order to correct any issues of non-compliance and implement the agreed plan to resolve such issues. CONSULTANT recommendations shall be made with the following considerations in mind:

- (1) Public Safety Radio towers are an important part of the CITY's long range wireless support goals and shall be carefully reviewed.
- (2) Development of new tower locations on the Property shall include coordination with the CITY's Public Safety communications in order to help provide a more comprehensive radio and cellular coverage pattern to support the CITY, its residents and visitors.

e. Market targeted Property identified in the Wireless Master Plan as existing Wireless Communication Facilities ("City Facilities"), and Property identified by the CITY as potential sites for wireless development, at no cost to CITY. CONSULTANT will use commercially reasonable efforts to market the City Facilities and other Property to Operators to obtain their feedback and interest in collocating on any existing and proposed site(s) included in the Wireless Master Plan, and CONSULTANT will provide any feedback to CITY for possible modification/evolution of the Wireless Master Plan. CITY grants to CONSULTANT the exclusive right to market, lease, and construct wireless facilities, at CONSULTANT's sole cost and expense, upon all Property included in the Wireless Master Plan but only to the extent CITY desires to make any specific property available for wireless development and subject to section 5.h. CONSULTANT must market the Wireless Master Plan to all Operators and without any discrimination or favoritism between Operators, in order to ensure that CITY's residents receive the maximum benefit of all available services from all existing Operators.

f. Propose options to include marketing the identified sites for co-location on City Facilities, if technically and structurally feasible, or for the installation of replacement towers on these sites for migration of public safety equipment over to the new tower and/or to have more than one tower on a site; provided, however, that CONSULTANT shall not be responsible for third party costs and expenses associated with the obligations of CONSULTANT under this clause (f).

g. Review existing CITY ordinances and recommend revisions to reflect best management practices that are compliant with current federal, state and local laws.

h. Own any Wireless Communication Facilities that it constructs on the Property, including any facility that replaces an existing City Facility, (collectively, "Consultant Facilities"); though the City will retain ownership of all City Facilities and all Property. (However, CITY will grant to CONSULTANT appropriate easements for space, access, and utilities.) Consultant will have the exclusive right to sublease to Operators on all City Facilities and on the Property associated with the City Facilities, whether or not a Consultant Facility is constructed or operated thereon.

II. Phase II- IMPLEMENTATION

A. The Consultant shall:

- (1) Perform all tasks outlined in CONSULTANT'S Response to RFP IT-16-01 under "Phase II", Exhibit "A". In the event of a conflict between the terms of the Response to RFP and this CONTRACT, the terms of this CONTRACT shall control.
- (2) Provide wireless communication consulting services to structure license agreements on Property for the construction and operation of Consultant Facilities for co-location of Operators and their respective equipment and co-location of Operators' and their respective equipment on City Facilities. Upon Consultant's receipt of an Operator's expression of interest (by executing a letter of intent or any other manner acceptable to the parties) in co-locating on a City Facility or on a contemplated Consultant Facility, Consultant shall so notify City in a manner that they may agree from time-to-time (which may include electronic mail). (i) If the Operator is interested in co-locating on a City Facility, Consultant will negotiate, on City's behalf, the terms and conditions of the agreement for Operator's use and co-location on the City Facility ("City Facility Agreement"). The City Facility Agreement shall contain customary terms for a similar transaction, be reasonably acceptable to City, be executed thereby but will, among other things, provide that all fees to be paid by Operator thereunder be remitted to Consultant. (ii) If the Operator is interested in co-locating on a potential Consultant Facility, City and Consultant will execute an Option and Ground Lease Agreement (which shall have an initial term of five (5) years with nine (9) five (5) year renewal terms) or Rooftop Lease Agreement (hereafter collectively "Option Agreement"), as applicable, in a form reasonably acceptable to the City and CONSULTANT. In addition, Consultant will negotiate, on its behalf, the terms and conditions of the agreement for Operator's use and co-location on the Consultant Facility ("Consultant Facility Agreement"), which will be executed by Consultant and Operator. In the event of any conflict between the terms of this CONTRACT and the terms of an Option Agreement, the terms of the Option Agreement shall control, as long as the Option Agreement was executed by the CITY.
- (3) Coordinate the preparation of and revisions to site construction packages for Consultant Facilities to include site drawings and specifications.
- (4) Coordinate the preparation of architectural/engineering design drawings and provide the CITY with as-built drawings of the City Facilities and Consultant Facilities.

(5) Coordinate with the CITY's Planning Division and prepare applications, zoning variances and all permits, including special use permits, and attend all necessary hearings relating to the construction and operation of Consultant Facilities, including the installation and operation of Operators' equipment thereon and for the installation and operation of Operators' equipment on City Facilities.

(6) Coordinate and manage construction of Consultant Facilities in cooperation with the CITY.

(7) Verify construction of Consultant Facilities is completed pursuant to applicable CITY requirements and regulations.

(8) Assess radio frequency interference and health and safety engineering in accordance with applicable law prior to each Operator installation.

(9) Arrange and coordinate access for Operators (and other necessary parties) to perform alignment, inspection, survey and other architectural/engineering work on Wireless Communication Facilities in cooperation with the CITY. Further, CITY agrees to reasonably cooperate with providing access to the extent necessary for CONSULTANT to perform its duties under this CONTRACT.

(10) Work to resolve Operator issues that arise during the course of the license agreement. The types of issues which may be encountered could include, but are not limited to: interference issues, payment issues, insurance issues, maintenance issues, or unauthorized changes made by the Operator.

(11) Assist with lease or license agreement renewals and any requests for lease or license agreement amendments.

(12) Take ultimate responsibility for maintaining all CONSULTANT Facilities and the four (4) towers owned by CITY (as reflected on Exhibit "C" and hereafter "City Towers"). This maintenance obligation includes ensuring the equipment and surrounding areas are kept neat and clean, and performing periodic inspections of all Wireless Communications Facilities in accordance with standard industry practice. CONSULTANT will not charge the CITY for periodic visual and non-engineering inspections. CONSULTANT will coordinate required EIA/TIA inspections, road maintenance, basic ground maintenance including landscaping, and other maintenance to be agreed. Regarding maintenance of City Towers, CONSULTANT will provide a quarterly budget outlining future maintenance schedule and costs for CITY approval. Such initial budget is attached as Exhibit E. Should equipment require repair, CONSULTANT will submit the estimated repair cost (and CONSULTANT out of pocket costs, if any) to the CITY for approval prior to undertaking the repair. Any work required that is not specifically listed on Exhibit E shall be preapproved by CITY in writing.

B. The City shall promptly review and execute Option Agreements, Option and Lease Agreements, Rooftop Lease and City Facility Agreements, once reasonably approved by the CITY.

Section 2. Pricing Terms

- a. The CITY shall receive a Site Development Fee of Twenty-five Thousand and 00/100 Dollars (\$25,000.00) upon the commencement of construction for each new tower built and owned by the CONSULTANT.
- b. Subject to subsection (e), for amendments or extensions (after the date of this CONTRACT) to existing City Facility Agreements with wireless carriers where CONSULTANT increases recurring revenue, CONSULTANT shall pay to the CITY seventy-five percent (75%), with CONSULTANT retaining twenty-five percent (25%) of the increased recurring revenue. Unless as otherwise specified herein, CONSULTANT will not share in revenue from existing CITY Facility leases.
- c. Subject to subsection (e), the CITY shall receive sixty five percent (65%) of new recurring revenue by new tenants which locate or collocate on the City Facilities and Property and CONSULTANT shall retain thirty five percent (35%) of new recurring revenue on City Facilities and Property. This clause does not relate to revenue for Consultant Facilities, which is addressed in 2d.
- d. The CITY shall receive forty percent (40%) of new recurring revenue on Consultant Facilities constructed and CONSULTANT shall retain sixty percent (60%).
- e. Solely as to CITY Facilities (and not applicable to any Consultant Facilities which shall be governed by the terms of an Option Agreement, nor existing City Facility Leases), the CITY shall be entitled to receive 100% of gross rental payments with respect to each individual site upon the occurrence of the following:
 - 1. As to subsection "b" of this Section 2 and with respect to each separate agreement at a site, the earlier of; i) termination of the underlying agreement with Operator (including all renewal terms); or ii) twenty-five (25) years from the effective date of the amendment or extension, as the case may be.
 - 2. As to subsection "c" of this Section 2 and with respect to each separate agreement at a site, the earlier of; i) termination of the underlying agreement with Operator (including all renewal terms); or ii) twenty-five (25) years from the commencement date of the underlying agreement with the new Operator.
- f. Subject to the twenty-five (25) year limitations in subsection "e", subsections "b", "c", "d" and "e", shall survive termination of this CONTRACT. The parties will include the relevant provisions in this Section 2 in all tower leases.

Section 3. Term

- a. Term. This CONTRACT shall be effective on the date it is executed by both parties, and shall extend for a period of five (5) years from the date set forth above, and will automatically renew for three (3) successive five (5) year terms for a total of 20 years, unless either party provides notice of non-renewal at least one hundred eighty (180) days prior to the expiration of the then current term. Upon expiration of this Contract, CONSULTANT's ability to market the Property and City Facilities shall terminate.
- b. Termination for Convenience. The CITY, by written notice, may terminate this CONTRACT, in whole or in part, when it is in the CITY's interest any time after the initial five (5) year term. The CITY's Notice of Termination shall provide the CONSULTANT thirty days prior notice before it becomes effective. The CITY's termination will have no effect on Consultant Facilities, leases, subleases, or licenses authorized by the City under this CONTRACT.
- c. Default. In the event that there is a default by either party to this CONTRACT, the party claiming a default of any term or condition of this CONTRACT shall provide the defaulting party with written notice of the default. After receipt of such notice, the non-defaulting party shall have thirty days in which to cure any monetary default and sixty days in which to cure a non-monetary default (or such longer period as is appropriate if such default cannot reasonably be cured within 60 days).

Section 4. Indemnity and Insurance

a. Indemnification.

- (1) The CONSULTANT shall indemnify, defend, and hold harmless CITY, its officers and employees, from and against a liability, or an expense asserted by a third party, including reasonable attorney's fees, or both, that arise out of, pertain to, or relate to a negligent act, error, or omission of CONSULTANT, but only to the extent that such liability, expense or claim is not caused by or occasioned by or the result of the negligence or willful misconduct of the CITY. CONSULTANT acknowledges the receipt of such good and valuable consideration provided by City in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida. This clause shall survive the termination of this Agreement. Compliance with any insurance requirements required elsewhere within this Agreement shall not relieve CONSULTANT of its liability and obligation to defend, hold harmless and indemnify City as set forth in this article of the Agreement. CONSULTANT shall require each of its AGENTS/SUBCONTRACTORS to agree to indemnity obligations substantially similar to those set forth herein.
- (2) To the extent of the monetary limits of Fla. Stat. 768.28, CITY shall indemnify, defend, and hold harmless CONSULTANT its officers and employees, from and against a liability, or an expense asserted by a third party, including reasonable attorney's fees, or both, that arise out of, pertain to, or relate to a negligent act,

error, or omission of CITY, but only to the extent that such liability, expense or claim is not caused by or occasioned by or the result of the negligence or willful misconduct of the CONSULTANT. CITY acknowledges the receipt of such good and valuable consideration provided by CONSULTANT in support of these indemnification, legal defense and hold harmless contractual obligations in accordance with the laws of the State of Florida. This clause shall survive the termination of this Agreement. Nothing herein shall be construed to extend CITY's liability beyond that provided in section 768.28, Florida Statutes.

- (3) If CONSULTANT subcontracts or assigns all or any portion of the Consulting Services or Management Services under this CONTRACT, each such subcontractor or assign must indemnify, defend, and hold harmless CITY under the terms of this Section.
- (4) This indemnification will survive termination of this CONTRACT.

b. Insurance. At the time CONSULTANT signs and delivers this CONTRACT to CITY, as well as at all times during the term of this CONTRACT, CONSULTANT shall maintain, at a minimum, the required insurance as set forth in the attached Exhibit "D" to this CONTRACT. CITY shall be entitled to coverage at the maximum policy limits for the required insurance maintained by CONSULTANT, which shall at no time be less than the required amounts set forth in the attached Exhibit "D" to this CONTRACT. This CONTRACT's insurance provisions shall be separate and independent from the indemnification and defense provisions of Section 4.a of the CONTRACT and shall not in any way limit the applicability, scope or obligations of the indemnification defense provisions in Section 4.a.

Section 5. Miscellaneous

a. Financing Provisions. CITY owned real or personal property must not be encumbered, lien or pledged.

b. Right to Audit. During the term of this CONTRACT, and for a period of five (5) years after the CONTRACT expires or is terminated, the parties shall maintain originals of all records, books, papers and documents relating to this CONTRACT and all accompanying agreements. At all reasonable times, the parties will allow the other to have access to, examine, copy, and audit such records no more frequently than once per twelve (12) month period. Additionally, CONSULTANT will allow CITY, at any time within the audit period, to have access to and examine and audit (but not copy) records, books, papers and documents relating to or evidencing the payments required to be made hereunder no more frequently than once per twelve (12) month period. This section shall survive the termination of this CONTRACT.

c. Independent Contractor Relationship. The CONSULTANT is, and shall be, in the performance of all work services and activities under this CONTRACT, an Independent Contractor, and not an employee, agent, or servant of the CITY. All persons engaged in any of the work or services to be performed by CONSULTANT pursuant to this CONTRACT shall at all times, and in all places, be subject to the CONSULTANT's sole discretion, supervision, and control. The CONSULTANT shall exercise control over the means and manner in which it and its employees perform the work, and in all respects the CONSULTANT's relationship and the

relationship of its employees to the CITY shall be that of an Independent Contractor and not as employees or agents of the CITY. The CONSULTANT does not have the power or authority to bind the CITY in any promise, agreement or representation other than as specifically provided for in this CONTRACT.

d. Public Safety Communications. CONSULTANT shall use commercially reasonable efforts to accommodate requests for Public Safety communication systems equipment and other CITY-owned equipment, subject to space availability, capacity, and the rights of existing sublicensees to use the facilities. CITY shall pay for all costs and expenses associated with any installation, maintenance and operation under this Public Safety Communications sub-section.

e. Compliance with Local Ordinances. CONSULTANT shall comply with all CITY's ordinances including but not limited to CITY's ordinance pertaining to wireless facilities.

f. Governing Law. This CONTRACT shall be governed by the laws of the State of Florida. In the event of any dispute the parties agree to waive all rights to demand a jury trial.

g. The CITY is exempt from payment of Florida State Sales and Use Taxes. The CITY will sign an exemption certificate submitted by the CONSULTANT. The CONSULTANT shall not be exempted from paying sales tax to its suppliers for materials used to fulfill contractual obligations with the CITY, nor is the CONSULTANT authorized to use the CITY's Tax Exemption Number in securing such materials.

h. CITY's Use of the Facilities.

The CITY has the right to install wireless communications equipment, exclusively for CITY use, on all Property, all CITY Towers, properties and buildings, and Consultant Facilities. Further, CITY may construct its own Wireless Communications Facilities (separate and apart from Consultant Facilities) and may use same for CITY use ("CITY Wireless Communications Facility").

If a third party approaches CITY to collocate on any CITY Wireless Communications Facility or lease CITY Property for the purpose of constructing and owning a tower, CITY will refer such third party to CONSULTANT. Any resulting license or lease will be subject to the terms of this CONTRACT. During the term of this CONTRACT, CITY or CONSULTANT may receive a proposal ("Proposal") from a third party seeking to (i) purchase any or all of CITY's interest in a City Wireless Communications Facility license or CITY Tower or (ii) lease CITY Property for the purpose of constructing and owning a tower. With respect to (i) above, CONSULTANT will have the right of first refusal to purchase such interest on the terms provided in the Proposal. With respect to (ii) above, CONSULTANT will have the right of first refusal to construct and own such tower on the terms and conditions of Section 2 and the balance of this CONTRACT. If CONSULTANT does not exercise its right of first refusal by written notice to CITY within thirty (30) days of its receipt of the Proposal, CITY may proceed with the Proposal on the terms provided therein. Even if CONSULTANT declines to exercise its right of first refusal, this CONTRACT will continue in effect and CONSULTANT's right of first refusal will survive. Notwithstanding CONSULTANT's decision not to exercise any right of first refusal, CONSULTANT shall manage any resulting Operator location and/or collocation in accordance with this CONTRACT.

i. Assignment. This CONTRACT shall not be assigned by any party except as follows: 1) CONSULTANT may assign this CONTRACT or any portion thereof to an affiliate or subsidiary of CONSULTANT in which subsidiary or affiliate CONSULTANT retains at least a 50% ownership, and shall provide prior written notice of such assignment to CITY, 2) to a party who acquires a majority of the assets of CONSULTANT, or 3) CONSULTANT may grant a security interest in this CONTRACT and the Consultant Facilities, and may assign this CONTRACT and the Consultant Facilities to any such holders of security interests, including their successors and assigns (hereinafter, collectively referred to as "Secured Parties"). In such event, CITY shall execute such consent as may reasonably be required by Secured Parties. CONSULTANT shall have the right, without CITY's consent, to sublease or assign its rights under this CONTRACT and to permit any of its Licensees to in turn sublicense or sublease its interests, but any such sublease or assignment shall be subject to all terms and conditions of this CONTRACT. Upon assignment of all of its rights pursuant to this CONTRACT, and the execution of a written assumption of all of the terms and conditions of the CONTRACT by the assignee, CONSULTANT shall be released from any further liability under this CONTRACT. CONSULTANT shall have the right, without CITY's consent, to sublease its rights under leases of Consultant Facilities if allowed in the lease, but any such sublease shall be subject to all terms and conditions of this CONTRACT and the lease.

j. **Public Record.** The parties hereto specifically acknowledge that this CONTRACT is subject to the laws of the state of Florida, including without limitation, Chapter 119, Florida Statutes, which generally make public all records or other writings made or received by the parties. If CONSULTANT is either a "contractor" as defined in Section 119.0701(a)(a), Florida Statutes, or an "agency" as defined in Section 119.011(2), Florida Statutes, then, pursuant to Section 119.0701, Florida Statutes and other applicable public records laws, CONSULTANT agrees that any of City's documents, papers, letters, maps, books, tapes, films, photographs, sound recordings, data processing software, or other material(s), regardless of the physical form, characteristics, or means of transmission, made or received by CONSULTANT in its performance of its duties and obligations under this CONTRACT and pursuant to law or ordinance or in connection with the transaction of official business by the CITY (such documents, the "Public Records"), may be deemed to be a public record, whether in the possession or control of the CITY or the CONSULTANT. Said documents, papers, letters, maps, books, tapes, films, photographs, sound recordings, data processing software or other material(s), regardless of the physical form, characteristics, or means of transmission of CONSULTANT are subject to the provisions of Chapter 119, Florida Statutes, and may not be destroyed without the specific written approval of the CITY's designated custodian of public records or according to and pursuant to Chapter 119, Florida Statutes. Notwithstanding anything contained herein, in the event that the CITY has an original of a Public Record, then any other additional originals or copies of such Public Record in the possession of CONSULTANT shall not be considered a Public Record and CONSULTANT shall have no duties or obligations under this CONTRACT and shall not be subject to the provisions of Chapter 119, Florida Statutes with respect to such Public Record.

IF THE CONSULTANT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE CONSULTANT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS CONTRACT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS, the CITY clerk, AT (386)986-3709, vsmith@palmcoastgov.com; 160 Lake Avenue, Palm Coast, FL, 32164.

Subject to the last sentence of the first paragraph of this Section, CONSULTANT is required to and agrees to comply with public records laws. CONSULTANT shall keep and maintain all public records required by the CITY to perform the services as agreed to herein. CONSULTANT shall provide the CITY, upon request from the CITY Clerk, copies of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by law. CONSULTANT shall ensure that Public Records that are exempt or confidential under Chapter 119, Florida Statutes, and exempt from Public Records disclosure requirements are not disclosed except as authorized by law for the duration of the CONTRACT term. Upon completion of the CONTRACT, CONSULTANT shall transfer to the CITY, at no cost, all Public Records in possession of the CONSULTANT, provided the transfer is requested in writing by the CITY Clerk. Upon such transfer, CONSULTANT shall destroy any duplicate Public Records that are exempt or confidential and exempt from Public Records disclosure requirements. However, if the CITY Clerk does not request that the Public Records be transferred, the CONSULTANT shall continue to keep and maintain the Public Records upon completion of the CONTRACT and shall meet all applicable requirements for retaining Public Records. All Public Records stored electronically must be provided to the CITY, upon request from the CITY Clerk, in a format that is compatible with the information technology systems of the CITY. Should the CITY not possess Public Records relating to this CONTRACT which are requested to be inspected or copied by the CITY or any other person, the CITY shall immediately notify CONSULTANT of the request and the CONSULTANT shall then provide such Public Records to the CITY or allow the Public Records to be inspected or copied within a reasonable time. If the CONSULTANT does not comply with a Public Records request, the CITY may enforce this Section to the extent permitted by law. CONSULTANT acknowledges that if the CONSULTANT does not provide the Public Records to the CITY within a reasonable time, the CONSULTANT may be subject to penalties under Section 119.10, Florida Statutes. The CONSULTANT acknowledges that if a civil action is filed against the CONSULTANT to compel production of Public Records relating to this CONTRACT, the court may assess and award against CONSULTANT the costs of enforcement, including attorney fees. All public records in connection with this CONTRACT shall, at any and all reasonable times during the normal business hours of the CONSULTANT, and with prior written notice, be open and freely exhibited to the CITY for the purpose of examination, audit, or otherwise. Failure by CONSULTANT to grant such access to the City and comply with Public Records laws and/or requests shall be grounds for immediate unilateral cancellation of this CONTRACT by the CITY upon delivery of a written notice of cancellation. If the CONSULTANT fails to comply with this Section, and the CITY must enforce this Section, or the CITY suffers a third party award of attorney's fees and/or damages for violating Chapter 119, Florida Statutes, due to CONSULTANT's failure to comply with this Section, the CITY shall collect from CONSULTANT prevailing party reasonable attorney's fees and costs, and any damages incurred by the CITY, for enforcing this Section against CONSULTANT. And, if applicable, the CITY shall also be entitled to reimbursement of all attorneys' fees and damages which the CITY had to pay a third party because of the CONSULTANT's failure to comply with this Section. The terms and conditions set forth in this Section shall survive the termination of this CONTRACT.

k. Attorney's Fees. Each party has been represented by legal counsel in the course of the negotiation of this CONTRACT. Should legal action be instituted by any party to this CONTRACT to enforce or interpret any provision of this CONTRACT, the prevailing party shall recover its reasonable costs and reasonable attorney's fees.

1. Notices. All notices, approvals, acceptances, demands and other communication required or permitted under this CONTRACT, to be effective, shall be in writing and, unless otherwise provided herein, shall be deemed validly given on the date either: (1) personally delivered to the address indicated below; or (2) on the third business day following deposit, postage prepaid, using certified mail, return receipt requested, in any U.S. Postal mailbox or at any U.S. Post Office; or (3) one business day after the dispatch date by overnight delivery service. All notices, demands, or requests shall be addressed to the following:

CITY : City Manager
City of Palm Coast
160 Lake Avenue
Palm Coast, FL 32164
Telephone: 386-986-3700
Fax: 386-986-3737

CONSULTANT: Diamond Towers IV LLC
Attn: Legal Dept.
820 Morris Turnpike, Suite 104
Short Hills, NJ 07078
Telephone: 973-544-6811

m. Waiver. No waiver of any provision of this CONTRACT, or consent to any action, shall constitute a waiver of any other provision of this CONTRACT, or consent to any other action.

n. Authority. Each party represents and warrants to the other party that it has the full right, power, and authority to enter into this CONTRACT and all persons signing on behalf of a party were authorized to do so by the appropriate corporate, partnership or other action.

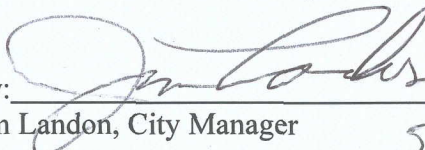
o. Entire Agreement. No oral agreements, promises or understandings shall be binding upon either CITY or CONSULTANT in any dispute, controversy or proceeding at law. Any addition, variation or modification to this CONTRACT shall be void and ineffective unless made in writing and signed by the parties hereto.

p. Multiple Counterparts. This CONTRACT may be executed in multiple counterparts, all of which together shall constitute one and the same instrument.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, parties have executed this CONTRACT as of the date written above.

CITY OF PALM COAST, FLORIDA

By: 
Jim Landon, City Manager

5/12/17

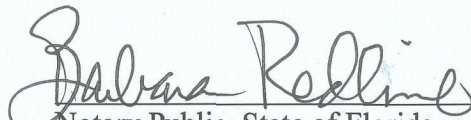
ATTEST:


Virginia A. Smith, MMC, CP

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 12th day of May, 2017, by JIM LANDON, City Manager, of the City of Palm Coast, who is personally known to me.




Notary Public, State of Florida
Print name: BARBARA REDLINE
My Commission Expires: MARCH 11, 2019

WITNESSES:

Jessica Weinberg

DIAMOND TOWERS IV LLC, a Delaware
limited liability company

Michael G. Brett
By: Michael G. Brett
Title: Chief Financial Officer

STATE OF NEW JERSEY
COUNTY OF ESSEX

The foregoing instrument was acknowledged before me on this 5th day of May
2017, by MICHAEL G. BRETT, as Chief Financial Officer of the DIAMOND TOWERS IV LLC,
who is personally known to me.

Michelle Zakalik
Notary Public – State of New Jersey

Print name: _____

My commission expires: _____

MICHELLE ZAKALIK
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES JUNE 12, 2018

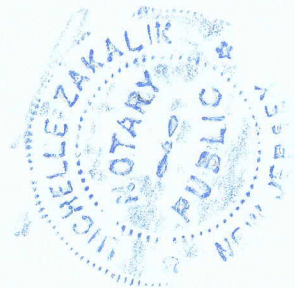


EXHIBIT "A"

CONSULTANT'S RESPONSE TO RFP IT-16-01

[attachment set forth on the following pages]