

City of Palm Coast, Florida Agenda Item

Agenda Date: 11/19/2019

Department Item Key	IT/INNOVATION	Amount Account
Subject	RESOLUTION 2019-XX APPROVING AN OPTION AND GROUND LEASE AGREEMENT WITH DIAMOND TOWERS V LLC FOR CONSTRUCTION OF A TELECOMMUNICATIONS TOWER AT PALM COAST FRIEDA ZAMBA POOL F111	
Background :		
<p>On May 1, 2017, City Council approved a contract with Diamond Towers for Telecommunications consulting to improve wireless coverage throughout the City of Palm Coast. The scope of services included developing a wireless master plan and attracting additional carriers to existing towers and developing new towers on potential sites identified in the wireless master plan. In exchange for these services, the City shares increased revenue generated from leases of existing towers and new towers, as outlined in the approved contract.</p> <p>Diamond Towers V LLC has requested to lease City property located at Palm Coast Frieda Zamba Pool F111 for the purpose of constructing a 150-foot high, telecommunications facility (structure). The tower will be a monopole style tower with a full antennae array. This facility will have the capacity to accommodate at least four (4) carriers. This site is part of the approved Wireless Master Plan.</p> <p>The terms of the lease agreement are consistent with the City Council approved contract with Diamond Towers. Some of the highlights are as follows:</p> <ol style="list-style-type: none"> 1. Initial term will be five years with the option to extend for nine, five-year periods. 2. A Site Development Fee of \$12,500 shall be paid to the City upon the commencement of construction of the tower. 3. The city will continue to receive 100% of the revenue from the existing tower and 40% of any new recurring revenue generated by the new tower. 4. Diamond Towers V LLC will have access to the land to build a 150-foot structure and house ground equipment on the site. 		
Recommended Action :		
APPROVE RESOLUTION 2019-XX APPROVING AN OPTION AND GROUND LEASE AGREEMENT WITH DIAMOND TOWERS V LLC FOR CONSTRUCTION OF A TELECOMMUNICATIONS TOWER AT PALM COAST FRIEDA ZAMBA POOL F111		

RESOLUTION 2019 - ____
OPTION AND GROUND LEASE AGREEMENT
WITH DIAMOND TOWERS V LLC

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING AN OPTION AND GROUND LEASE AGREEMENT WITH DIAMOND TOWERS V LLC FOR CONSTRUCTION OF A TELECOMMUNICATIONS TOWER AT PALM COAST FRIEDA ZAMBA POOL F111; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE SAID AGREEMENT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City of Palm Coast contracted with Diamond Towers V, LLC to improve wireless services in the City of Palm Coast; and

WHEREAS, Diamond Towers V, LLC desires to construct a monopole style tower facility at the Palm Coast Frieda Zamba Pool F111 which will have the potential to accommodate at least four carriers; and

WHEREAS, Diamond Towers V, LLC has expressed a desire to lease said property; and

WHEREAS, the City of Palm Coast desires to lease said land to Diamond Towers V, LLC for the construction of a wireless communication facility.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA AS FOLLOWS:

SECTION 1. APPROVAL OF OPTION AND GROUND LEASE AGREEMENT.

The City Council of the City of Palm Coast hereby approves the terms and conditions of the Option and Ground Lease Agreement with Diamond Towers V, LLC, as attached hereto and incorporated herein by reference as Exhibit "A".

SECTION 2. AUTHORIZATION TO EXECUTE. The City Manager, or designee, is hereby authorized to execute the Option and Ground Lease Agreement as depicted in Exhibit "A".

SECTION 3. SEVERABILITY. If any section or portion of a section of this Resolution proves to be invalid, unlawful, or unconstitutional, it shall not be held to invalidate or impair the validity, force, or effect of any other section or part of this Resolution.

SECTION 4. CONFLICTS. All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

SECTION 5. IMPLEMENTING ACTIONS. The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

SECTION 6. EFFECTIVE DATE. This Resolution shall take effect immediately upon adoption by the City Council.

DULY PASSED and approved by the City Council of the City of Palm Coast, Florida, on this 19th day of November 2019.

CITY OF PALM COAST, FLORIDA

ATTEST:

MILISSA HOLLAND, MAYOR

VIRGINIA A. SMITH, CITY CLERK

Attachments: Exhibit A-Option and Ground Lease Agreement Palm Coast Frieda Zamba Pool F111.

Approved as to form and legality

William E. Reischmann, Jr., Esquire
City Attorney

OPTION AND GROUND LEASE AGREEMENT

THIS OPTION AND GROUND LEASE AGREEMENT (“Agreement”) is made this ____ day of _____, 2019 (“Option Date”), between the **CITY OF PALM COAST** (“Optionor” or “Lessor”), at 160 Lake Avenue, Palm Coast, Florida, 32164, and **DIAMOND TOWERS V LLC** (“Optionee” or “Lessee”), a Delaware limited liability company, at 820 Morris Turnpike, Suite 104, Short Hills, NJ 07078. Collectively, the Optionor/Lessor and the Optionee/Lessee may be the “Parties.”

1. **Grant of Option.** For good and valuable consideration and mutual promises, Optionor grants unto Optionee and its assigns, an exclusive and irrevocable option to lease (“Option”) a certain parcel of real property, at the City of Palm Coast Frieda Zamba Pool FL111 (“Site”) as more particularly described in Exhibit “A,” attached and incorporated by reference.

2. **Option Initial Term.** The initial term of the Option is for six (6) months from the Option Date (“Option Initial Term”).

3. **Consideration for Option.** Consideration for the Option Initial Term is One Thousand and 00/100 Dollars (\$1,000.00) plus applicable taxes (“Option Consideration”) to be paid by the Optionee to the Optionor within fourteen (14) days of execution of this Agreement.

4. **Extension of Option.** This Option will be automatically extended by Optionee for each of two (2) additional six (6) month periods (“Option Renewal Term(s)”) unless Optionee notifies Optionor of its intent not to extend the Option. Additional consideration of One Thousand and 00/100 Dollars (\$1,000.00) is due within fourteen (14) days of the commencement of any Option Renewal Term.

5. **Exercise of Option.** Optionee may, at its sole discretion, exercise its option and commence the Ground Lease by delivery of written notice to Optionor at any time during the Option Initial Term or any Option Renewal Term (the “Commencement Date”). The exercise of the Option may not be later than eighteen (18) months following the date of execution of this Agreement. Optionee must notify Optionor in writing, following the requirements of Section 19 of the Ground Lease, of the recordation of the Memorandum of Lease. Upon Optionor’s receipt of Optionee’s notice of exercise of option and recording of the Memorandum, the terms of the Ground Lease (“Lease”), beginning on page 3, will govern the relationship of the Parties.

6. **Optionor’s Representations and Warranties.** As an inducement for Optionee to enter into and be bound by the terms of this Option, Optionor represents and warrants to Optionee and Optionee’s successors and assigns that:

- (a) Optionor has good and marketable title to the Site, free and clear of all liens and encumbrances;
- (b) Optionor has the authority to enter into and be bound by the terms of this Option;
- (c) Optionor is not aware of any pending or threatened administrative actions, including bankruptcy or insolvency proceedings under state or federal law, suits, claims or causes of action against Optionor which may otherwise affect Optionor’s rights to the Site; and

(d) The Site is not subject to an option, lease, or other contract which may adversely affect Optionor's ability to fulfill its obligations under this Option, and Optionor covenants it will not enter into any contract which will affect the Site until this Option expires or is terminated by Optionee.

These representations and warranties will survive the exercise of the Option and the term of the Lease.

7. **Inspections and Investigations.** Optionor grants to Optionee, its officers, agents, employees, and independent contractors, the right and privilege to enter upon the Site at any reasonable time after the Option Date and after obtaining written approval from Optionor (not to be unreasonably withheld, conditioned, or delayed), to perform site inspections, which may include test borings of the soil, environmental audits, engineering studies and to conduct a survey of the Site. Optionor will provide Optionee with keys and access codes to the Site, if needed, for ingress and egress. The right to access the Site is for the limited purpose of evaluating the feasibility of the Site. Optionee is not an owner or operator of the land and will have no ownership or control of any portion of the Site prior to the execution of this Option. Optionee may not unreasonably interfere with Optionor's use of the Site in conducting these activities. Optionee has the right, at its cost and expense, and with written approval from Optionor (not to be unreasonably withheld, conditioned, or delayed), to have the Site surveyed and to obtain, from a title company of its choice, a title report of commitment for a leasehold and title policy covering the Site. Optionor will remove any survey or title defects that may adversely affect Optionee's leasehold title or its ability to mortgage the leasehold interest. In the event Optionor fails to cure any such defects, Optionee's sole remedy will be to declare this Option to be void and of no further effect, in which case there will be no further liability by Optionee to Optionor. Optionee will indemnify Optionor against all liability, damage, claim, cost and expense resulting from Optionee's exercise of this right of entry. Optionee agrees to restore the Site to substantially the same condition it was in prior to investigating.

8. **Further Acts.** Optionor will cooperate with Optionee in executing or filing of any documents necessary to protect Optionee's rights under this Option, to allow Optionee's use of the Site, and to affect the intent of this Option.

9. **Successors and Assigns.** This Option is binding upon and inures to the benefit of the Parties, their respective heirs, successors, personal representatives and assigns.

10. **Third-Party Beneficiaries.** This Option benefits Optionor and Optionee only. It is not intended for the benefit of any other party.

11. **Assignability.** This Option shall not be assigned by any party except as follows: 1) Optionee may assign this Option or any portion thereof to an affiliate or subsidiary of Optionee in which subsidiary or affiliate of Optionee or Optionee's direct or indirect parent retains at least a 50% ownership, and shall provide prior written notice of such assignment to Optionor, 2) to a party who acquires a majority of the assets of Optionee, or 3) Optionee may grant a security interest in this Option and the Tower Facilities, and may assign this Option and the Tower Facilities to any such holders of security interests, including their successors and assigns (hereinafter, collectively referred to as "Secured Parties"). In such event, Optionor shall execute such consent as may reasonably be required by Secured Parties. Optionee shall have the right, without Optionor's consent, to sublease or assign its rights under this Option and to permit any of its sublessees to in

turn sublicense or sublease its interests, but any such sublease or assignment shall be subject to all terms and conditions of this Option. Upon assignment of all of its rights pursuant to this Option, and the execution of a written assumption of all of the terms and conditions of the Option by the assignee, Optionee shall be released from any further liability under this Option. Optionee shall have the right, without Optionor's consent, to sublease its rights under leases of Tower Facilities if allowed in the lease, but any such sublease shall be subject to all terms and conditions of this Option and the lease.

12. **Waiver of Claim.** Except as specifically provided in this Agreement, in no event will Optionor or Optionee be liable to the other for, and Optionee and Optionor each hereby waive the right to recover, incidental, consequential (including, but not limited to, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.
13. Paragraph No. 33, Miscellaneous, of the Ground Lease, applies to this Option Agreement.
14. **Applicability of the Ground Lease.** The terms of the Ground Lease, beginning on Page 3, will be effective upon Optionee's exercise of this Option.

GROUND LEASE GOVERNING THE RELATIONSHIP OF THE PARTIES UPON THE EXECUTION OF THE OPTION

1. **Leased Premises.** Lessor will lease the property and grant a non-exclusive easement for ingress, egress and utilities for the duration of the Lease.
 - (a) The leased area is depicted in and attached as Exhibit "A" (the "Leased Premises"),
 - (b) The Leased Premises will be utilized to construct, support and operate a wireless communications facility. The facility will include a communication tower, antennas, cables, and related structures and improvements. The Tower Facilities (defined below) will be in the location shown in Exhibit "A". Lessee's utilization of the Leased Space must be consistent with Sections 5 and 8 of this Lease; and for only those other purposes which are ancillary and appurtenant to the Tower Facilities, with Lessor's prior-written consent, which will not be unreasonably withheld or delayed.
2. **Initial Term.** The term of this Lease is five (5) years commencing on the Commencement Date, and terminating on the fifth (5th) anniversary of the Commencement Date ("Initial Term"). The Parties agree that a Memorandum of Lease, attached as Exhibit "C," will be executed and recorded in the public records, setting forth the Lease Commencement Date and other matters. The Parties agree that Lessee will record the Memorandum of Lease in the public records. Lessee will notify Lessor in writing of the recordation of the Memorandum and Exercise of Option as noted in Section 19.
3. **Renewal Terms.** This Lease may be renewed for nine (9) additional five (5) year terms, ("Renewal Terms"). Each Renewal Term will be on the same terms and conditions as noted in this Lease. The Lease will automatically renew for each successive Renewal Terms unless Lessee notifies Lessor, one hundred twenty (120) days prior to the expiration of the Initial Term or the Renewal Term then in effect, of its intention not to renew the Lease.

4. **Rent.** Commencing on the first day of the calendar month following the Commencement Date, Lessee will pay to Lessor the rent (“Rent”) provided in the Rent Schedule attached as Exhibit “D,” which will include applicable State, County and local sales, rent or use tax.

(a) Rent must be paid by the tenth (10th) day of each calendar month, and must be remitted to the address shown for Lessor in the Lease, or such other address as Lessor may direct by written notice to Lessee.

(b) If the Commencement Date, or the date of termination (the “Termination Date”), of this Lease is other than the first (1st) day of the month, rent will be prorated. If termination of this Lease occurs for any reason, other than for nonpayment of Rent, all Rent paid before the Termination Date for a period after the Termination Date, will be refunded to Lessee.

(c) Lessee shall pay Lessor a Site Development Fee of Twenty-Five Thousand and 00/100 Dollars (\$25,000.00) upon the commencement of construction of the Tower, as defined herein.

5. **Use.**

(a) The Leased Premises may be used by Lessee for the transmission and receipt of wireless communication signals in all lawfully authorized frequencies and other uses as permitted under applicable zoning regulations to accommodate four (4) broadband wireless cellular carriers.

(b) At its sole cost and expense, Lessee may construct and maintain a One Hundred Fifty Foot (150’) monopole telecommunications tower (the “Tower”), structural tower base(s), communications equipment, one or more buildings or equipment cabinets, radio transmitting and receiving antennas, personal property and related improvements and facilities (the “Tower Facilities”), as per attached Exhibit A. Lessee’s Tower Facilities will be subject to applicable permitting, laws, regulations and ordinances.

(c) Lessee agrees that the Tower will comply with FAA rules and regulations regarding lighting of the Tower.

(d) Lessee may construct additional improvements, demolish and reconstruct improvements, or restore, replace and reconfigure improvements during the term of this Lease, provided it complies with all applicable regulations.

(e) Lessor agrees to cooperate with Lessee in obtaining, at Lessee’s expense, licenses and permits required for Lessee’s use of the Leased Premises, and will provide those to Lessor (the “Governmental Approval”).

6. **Lessor’s Representation and Warranties.** Lessor represents and warrants that:

(a) To the best of its knowledge, Lessee’s intended use as noted in Section 5 is not prohibited by covenants, restrictions, reciprocal easements, servitudes, subdivision rules or

regulations;

(b) It will not use, nor permit its lessees, licensees, invitees or agents to use, any portion of adjacent real property owned by Lessor which interferes with the wireless communications operation of Lessee;

(c) To the best of its knowledge, no Hazardous Materials, as defined below, have been generated, stored, disposed of or are present on or under the Leased Premises and the Easement(s) prior to the Commencement Date of this Lease;

(d) It has the full right, power, and authority to execute this Lease;

(e) It has good and marketable fee simple title to the Leased Premises and the Easement(s); and

(f) The Leased Premises constitutes a legal lot that may be leased without the need for any subdivision or platting approval.

7. **Lessee's Representations and Warranties.** Lessee represents and warrants that:

(a) It will not operate, or allow its tenants to operate any frequencies that would interfere with any governmental or Federal Aviation Administration (FAA) frequencies or equipment, or emergency services frequencies or equipment;

(b) All licensed contractors and subcontractors used by Lessee are authorized to work in the City of Palm Coast, Florida;

(c) It will keep current all licenses, permits, or certificates required for the operation and maintenance of the Leased Premises; and

(d) It is duly authorized to conduct business within the state of Florida.

(e) **Mechanic's Liens.** Lessee shall keep the Tower and the Site free and clear of all mechanic's and materialmen's liens arising from or relating to the installation, repair, maintenance, or removal of the Lessee's Tower Facilities on or from the Tower or the Site and Lessee's structural enhancement of the Tower, if any, and for a one hundred twenty (120) day period after completion of the installation, repair, maintenance, or removal of the Lessee's Tower Facilities on or from the Tower or the Site or any structural enhancements to the Tower. If an installation, repair, maintenance, or removal of the Lessee's Tower Facilities on or from the Tower or the Site or structural enhancement of the Tower, Lessee shall cause any such lien to be bonded or discharged of record within sixty (60) days of being notified of the lien. If Lessee fails to bond or discharge the lien within such sixty (60) day period, Lessor, in addition to any other rights or remedies available at law or equity, shall have the right to discharge the lien by paying the amount claimed to be due or to bond the lien. Any amount paid by Lessor in discharging or bonding any lien together with all reasonable costs and expenses, including, without limitation, reasonable attorney's fees and costs, shall be immediately due and payable to Lessor

upon demand from Lessor, and Lessee agrees to indemnify and hold harmless Lessor from all such amounts.

8. **Improvements, Utilities, Access, Maintenance.**

(a) Lessee may, at Lessee's expense, erect and maintain on the Leased Premises the Tower Facilities and other structures as noted in Section 5. The Tower Facilities are the exclusive property of the Lessee.

(b) Lessor grants Lessee a temporary construction easement in other real property owned by Lessor in form to be approved by the Parties as reasonably required to construct the Tower Facilities. Said easement will be for the duration of construction of the Tower Facilities, and will be in a location selected by Lessor.

(c) Lessee may install utilities and improve present utilities on the Leased Premises (including but not limited to the installation of emergency power generators), at Lessee's expense. Lessee has the right to permanently place utilities on the Easement(s) to service the Leased Premises and Tower Facilities, except that emergency power generators may not be placed on the Easement(s) (but may be placed in the Lease Premises). If utilities necessary to serve the equipment of Lessee or the equipment of Lessee's licensee(s) or sublessee(s) cannot be located within the Easement(s), Lessor agrees to cooperate with Lessee and to act reasonably in allowing the location of utilities (other than emergency power generators) on other real property owned by Lessor without requiring additional compensation from Lessee or Lessee's licensee(s) or sublessee(s), provided that such alternative locations are reasonably available, and acceptable to Lessor. In which case, Lessor will, upon Lessee's request, execute a separate written easement to be recorded by Lessee evidencing this right.

(i) Lessee must pay for the electricity it consumes in its operations at the rate charged by the servicing utility company. Lessee may draw electricity and other utilities from the existing utilities on the Site through a separate meter or obtain separate utility service from any utility company that will provide service to the Site (including a standby power generator for Lessee's exclusive use). Lessor agrees to sign such documents or easements as required by the utility company to provide service to the Leased Premises.

(d) Lessee will, during this Lease, enjoy ingress, egress, and access from the Leased Premises to an open and improved public road which presently exists under the easement form attached as Exhibit "B" to this Agreement. If the public road ceases to exist, Lessor will grant, if reasonably available, an easement to Lessee in a form acceptable to the Parties, and Lessee's sublessees and assigns, so they may, at their own expense, construct a suitable private access drive to the Leased Premises. To the degree such access is only practical across other property owned by Lessor, Lessor will execute a non-exclusive easement in a form to be approved by the Parties evidencing this right. Lessor will not engage in activities on the Easement(s) that will interfere with Lessee, its licensees, invitees, sublessees or agents' utilization of the Easement(s), and Lessee will not interfere with Lessor's use of the Easement(s). Such access will be provided twenty-four (24) hours per day, seven (7) days per week, excepted during City emergencies.

(e) After site plan approval, Lessor grants Lessee the right to clear all trees, undergrowth, or other obstructions to the Tower Facilities and to trim, cut, and keep trimmed all tree limbs which may interfere with or fall upon Lessee's Tower Facilities and Easement(s) rights, with prior written notice to Lessor, and subject to Lessee obtaining all required permits.

(f) Lessee must maintain, at its own expense and in a manner consistent with good business practice, the Leased Premises in good overall appearance, repair and safe condition.

(i) Lessee must repair all damages to the Leased Premises or Easement(s) caused by Lessee's employees, or agents. The quality of the repairs, replacements, and maintenance must be equivalent to the original in material and workmanship.

(ii) All paint color and exterior signage, except for any paint color or signage required by applicable laws, regulations or permit conditions, must be submitted to and approved in writing by Lessor prior to application.

(iii) Lessee must maintain the Tower and Tower Facilities in good working order and appearance and must maintain the structural integrity of the Tower, in accordance with all industry standards, and building and safety codes.

(iv) In accordance with industry standards, Lessee shall perform all Electronic Industries Alliance/Telecommunications Industry Association inspections ("EIA/TIA Inspection") on the Tower Facilities. Lessee will provide copies of same reports to Lessor upon request. If Lessor determines (in Lessor's reasonable judgement) that there are safety or maintenance concerns on the Tower, at Lessor's full cost and expenses (and at no expense to Lessee and upon written notice by Lessor, Lessee shall perform an EIA/TIA Inspection of the Tower. In the event that such inspection shall detect a safety or maintenance deficiency on the Tower the Lessee shall (using commercially reasonable efforts) have thirty (30) days to cure all such deficiencies or the Lessor shall have the right to cure same. Any expenses (except the cost of an EIA/TIA Inspection) incurred by the Lessor in remedying such deficiencies on the Tower required to be performed by the Lessee may be recovered by Lessor.

(v) Lessee must, at its own expense, keep the Leased Premises mowed and groomed and not allow the accumulation of trash or debris. The landscaping must be maintained in a manner consistent with the Lessee's site plan, City codes, and good horticultural practices, and free of unsightly conditions.

(vi) Interruptions. Lessor and Lessee agree that (subject to Lessor's negligence, gross negligence, or willful misconduct), Lessor shall have no responsibility or liability whatsoever for interruptions, disruptions, or failures in the Lessee's Tower Facilities or the operation of the Lessee's Tower Facilities including, without limitation, equipment failures, utility failures, structural failures, or otherwise. Lessor shall not give any unauthorized access to third parties to Lessee's Equipment; Lessor shall not be responsible to Lessee for any unauthorized access

by third parties. In all maintenance, repair, or replacement work performed by the Parties on their equipment located on the Tower or Leased Premises, both Parties shall take all reasonable steps to not interrupt or interfere with the operations of the other parties on the site without Lessee's written agreement.

9. **Termination.** Except as otherwise provided, this Lease may be terminated with no penalty or further liability upon written notice as follows:

(a) Upon thirty (30) days written notice by Lessee to Lessor, if Lessee cannot obtain or maintain, despite commercially reasonable efforts, any license, permit or other Governmental Approval for the construction and operation of the Tower Facilities or Lessee's business;

(b) By Lessee, for any reason, upon one (1) year's advance written notice;

(c) By either Party upon default of any covenant or term, which default is not cured within forty-five (45) days of receipt of written notice of default (without however, limiting any other rights available to the Parties under any other provisions). However, if the defaulting party commences efforts to cure the default within such period and diligently pursues curing of the default to completion within a reasonable time period, the non-defaulting Party may not declare a default;

(d) So long as Lessee is not diligently pursuing a cure of the below defaults (within a reasonable time period), Lessor may terminate this Lease, upon 30 days written notice to Lessee, if:

(i) Lessee defaults in the payment of Rent, other charges or expenses, or any installment which has not been paid within thirty (30) days after Lessor's written notice to Lessee that payment is due;

(ii) Lessee files a voluntary petition in bankruptcy; or proceedings in bankruptcy are instituted against Lessee and Lessee is adjudicated bankrupt under such proceedings;

(iii) A receiver or trustee is appointed over the property of Lessee; or

(iv) A levy is issued or entered against leasehold interests of Lessee.

(e) Three years from the date that Lessee's last sublessee vacates (terminates the sublease and removes all equipment from Tower Facilities) or three years from the date of Lessee's most recent rent payment to Lessor, whichever is later, if Lessor desires to terminate this agreement, Lessor shall provide Lessee with one hundred and twenty (120) days ("Notice Period") prior written notice ("Notice"). If during the Notice Period a new sublessee signs a sublease, or Lessee is actively engaged in acquiring a new sublessee, Lessor's Notice shall be invalidated and this Agreement shall continue in full force and effect.

10. **Surrender.**

- (a) Upon termination or expiration of this Lease, Lessee will:
- (i) Within one hundred twenty (120) days, remove the Tower Facilities, including the subsurface level and the foundation, and all other personal property and improvements which Lessee has installed on the Leased Premises and Easement(s) (except for portions of foundations greater than eighteen inches (18”) below ground level);
 - (ii) Peaceably and quietly deliver possession of the Leased Premises to Lessor; and
 - (iii) Repair, at its sole cost, damage to the Leased Premises or adjacent land owned by Lessor due to Lessee’s removal of its equipment or personal property to Lessor’s reasonable satisfaction.
- (b) Upon a termination by Lessor pursuant to Section 9(d), Lessor will have the right at its option and with thirty (30) days prior-written notice to Lessee of the termination to:
- (i) Remove Lessee and anyone claiming rights to the Leased Premises by summary proceedings or by any other lawful manner;
 - (ii) Repossess and enjoy the Leased Premises; and
 - (iii) Recover immediately from Lessee:
 - 1. Unpaid rent;
 - 2. Rent for the remainder of the then current Lease term, reduced to present value; and
 - 3. Any other damages caused by or resulting from the termination of the Lease.

NOTE: The rights of Lessor are cumulative. The exercise of rights under this Section will not exclude other rights and remedies authorized by law. No waiver by Lessor will operate as a waiver of any future default. Lessee expressly waives any right of redemption under any laws if Lessee is evicted or dispossessed for any cause.

11. **Removal Bond.** Lessee will provide Lessor with a copy of a construction or removal bond procured by Lessee in the amount of Thirty Thousand and 00/100 Dollars (\$30,000.00), naming Lessor as obligee thereunder, which bond may be used by Lessor toward the reasonable cost of removing and storing any Tower Facilities not removed by Lessee upon the expiration or termination of this Agreement and restoring the Lease Premises. Lessee will be obligated to timely pay required bond premiums in order to ensure that the bond remains in full force and effect during the Term and any Renewal Term of this Agreement, until such time as Lessee’s obligations to

remove the Tower Facilities and make any repairs to the extent required under this Agreement are satisfied.

12. **Sublessee's Improvements.** Lessee's sublessee(s) may modify and erect additional improvements on the Leased Premises, including antennas, dishes, cabling, additional storage buildings or equipment shelters as are reasonably required for the operation and maintenance of the communications equipment. The Lessee's and sublessee(s) have rights of ingress and egress to the Leased Premises and to install utilities to and on the Leased Premises and Easement(s) as if they were the Lessee under this Lease. Said sublessee(s) are subject to all terms and conditions of this Lease and its exhibits, and must be credit worthy and fully licensed. All sublessees must sign the agreement, attached as Exhibit "E," agreeing to be bound by the terms of the Lease.

13. **Permits.** Lessee must acquire and keep current all licenses, permits, and certificates (City, County, State and Federal) required for the conduct of its activities at the Leased Premises. Lessee agrees not to allow any of the licenses, permits, or certificates to become delinquent.

14. **Compliance with Laws.** Lessee must, at its own expense, and at no expense to Lessor, materially comply with all laws, regulations, rules, ordinances, and requirements (enacted or may be enacted during this Lease) of the City, County, State and Federal authorities and agencies, which affect this Lease, the land granted by this Lease, and any improvements or operations on the Leased Premises. These include all lawful rules and regulations relating to Stormwater Pollution, Spill Prevention Control, and Countermeasure Program, and building and safety codes which may be promulgated by Lessor. Nothing in this Lease may be deemed to create an affirmative duty of Lessor to abrogate its sovereign right to exercise its police powers which includes the power to act under its zoning and land use codes.

15. **Destruction of Premises.** If the Leased Premises or the Tower Facilities are destroyed or damaged, to the extent that they hinder the effective use of the Tower Facilities in Lessee's judgment, based on reasonable standards used by similar types of businesses, Lessee may elect to terminate this Lease in full as of the date of the damage or destruction by notifying the Lessor in writing. All rights and obligations of Lessee to Lessor and vice versa will cease as of the date of the damage or destruction, except for Lessee's obligation to remove Lessee's improvements; pay any Rent due up to that date; and any other provisions of this Lease that may survive the termination of this Lease. Lessee will be entitled to the reimbursement of any Rent prepaid by Lessee.

16. **Condemnation.** If a condemning authority takes all of the Leased Premises or Easement(s), or a portion sufficient to render the Leased Premises or Easement(s), in the opinion of the Lessee, using reasonably acceptable standards for the profession, unsuitable for uses consistent with Section 5, this Lease will terminate as of the date the title vests in the condemning authority. Lessee may file its own claims against the condemning authority for the value of its Tower Facilities, moving expenses, prepaid rent and business dislocation expenses. A sale of all or part of the Leased Premises or Easement(s) to a purchaser with the power of eminent domain, in the face of the exercise of eminent domain power, will be treated as a taking by condemnation.

17. **Insurance.** Lessee must purchase and maintain in full force and effect throughout the term

of this Lease insurance pursuant to Exhibit "F" attached hereto.

18. **Lessee's Environmental Covenants and Indemnity.** As used in this Lease, the term "Hazardous Materials" means any hazardous or toxic substance, material or waste which is, or becomes designated as such, including those designated as a hazardous substance under the Comprehensive Environmental Response, Compensation and Liability Act, the Resource Conservation and Recovery Act and the Clean Water Act.

(a) During the term of this Lease, Lessee must ensure the presence, use, storage, and disposal of any Hazardous Material, on or under the Leased Premises by Lessee, its agents, employees, business invitees, contractors or sublessees, comply with all laws, rules, regulations and orders. Lessee may not install or permit the installation of any underground storage tanks on the Leased Premises.

(b) Lessee, its grantees, successors, and assigns will indemnify, defend, reimburse and hold harmless Lessor from and against environmental damages caused by the presence of Hazardous Materials on the Leased Premises in violation of any applicable environmental laws and arising as the result of Lessee's activities after the execution of this Agreement. The warranty and indemnity of Lessor described in this Section will survive the termination of this Lease.

19. **Notices.** All notices required or permitted under this Lease must be in writing and are deemed effective upon personal delivery to a Party's employee, or upon certified U.S. Mail with return receipt signed by a Party's employee, or via overnight delivery upon signature receipt of a Party's employee. Such notices must be addressed to the Party at the addresses shown below, or at such other address or addresses as either Party designates to the other in writing under this Section:

As to Lessor: City of Palm Coast
Attn: IT Department and City Manager
160 Lake Avenue
Palm Coast, Florida 32164
(386) 986-3735
(386) 986-4775 fax

As to Lessee: Diamond Towers V LLC
Attn: Lease Administration
820 Morris Turnpike, Suite 104
Short Hills, NJ 07078

20. **Warranties, Covenants, and Guarantees.** Lessor makes no warranty, guarantee, or covenant of any nature, including covenants of quiet enjoyment, title or averment, or any warranty or representation concerning the condition of the Leased Premises. Lessor will not be responsible for any loss, damage, or costs which may be incurred by Lessee by any such condition. Lessee must take the Site and Leased Premises in as-is condition.

21. (RESERVED)

22. **Assignments and Subleases.**

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

23. **Successors and Assigns.** This Lease runs with the Leased Premises described on Exhibit "A" and is binding upon and inure to the benefit of the Parties, their respective heirs, successors, personal representatives, and assigns.

24. **Waiver of Incidental and Consequential Damages.** Except as specifically provided in this Agreement, in no event will Lessor or Lessee be liable to the other for, and Lessee and Lessor each hereby waive the right to recover incidental, consequential (including, but not limited to, lost profits, loss of use or loss of business opportunity), punitive, exemplary and similar damages.

25. **Certifications.** Either Party may request, in writing, that the other Party certify information to a prospective mortgagee or purchaser. Such certification:

- (a) Must be transmitted within ten (10) days after receipt of a written request;
- (b) May be relied upon by the Party requesting it;
- (c) Is binding on the Party executing it; and
- (d) May include:
 - (i) the validity, force and effect of this Lease;
 - (ii) the extent to which this Lease has been supplemented or amended;
 - (iii) the existence of any default;
 - (iv) the existence of any offsets, counter-claims or defenses by the other Party;

- (v) the commencement and expiration dates of the term;
- (vi) any prepaid rent; and
- (vii) any other matter as may reasonably be requested.

26. **Site Requirements.** Lessee agrees that:

- (a) It will conduct its operation on the Leased Premises in strict compliance with this Lease and with the rules and regulations of the City of Palm Coast and all other governmental agencies.
- (b) It will transact its business in such a manner as to develop and maintain the good will and active interest of those enjoying the use of the Site and who have or may have occasion to use its facilities or to come into relations with the Site.
- (c) It will not use nor permit the use of the Leased Premises for any unlawful or immoral purpose.
- (d) It will not permit a nuisance to be created on the Leased Premises.
- (e) It will prevent any use of the Leased Premises that would interfere with or adversely affect the operation or maintenance of the Site, or otherwise constitute a hazard.
- (f) It will design the Structures so as to not interfere with the City's Emergency Services, and so that the City's Emergency Services, including fire, police, rescue, emergency management, 911 and related personnel, will have space on the tower and within the Leased Space, to support and facilitate, at a minimum:
 - (i) Up to three (3) DB-810 or equivalent antennas;
 - (ii) Up to three (3) one and five eights inch (1 5/8") transmission lines for an 800 MHz radio repeater system, a P-25 system standard or any other emergency services equipment the Lessor may deem necessary for public safety; and
 - (iii) The City of Palm Coast's installation of equipment relating to tourism/marketing such as cameras or other observational or data gathering equipment. The exact height on the tower and location within the Leased Space will be determined at a later date. The Parties agree to enter into an Antenna Sublease Agreement prior to the Lessee installing any equipment on the Structures.
 - (iv) NOTE: The space allocated to the City for the installation of their equipment is subject to the following conditions:
 - 1. The City's emergency services equipment may not exceed three (3) DB-810 or equivalent antennas and three (3) one and five eights inch (1 5/8") transmission lines.

2. The space must be greater than one hundred (100) feet AGL and the antennas cannot be more than fifteen (15) vertical feet.
3. The ground space required for such equipment must be in a location that does not impede existing and reasonably anticipated future additional subleases.
4. There is no monthly rent.
5. The cost of installing the equipment is at the sole cost of the Lessor.

27. **Right of Lessor to Inspect Leased Premises.** Lessor or its representative may, upon twenty-four (24) hours' notice to, and accompanied by a representative of Lessee, enter the Leased Premises to examine it and for any other lawful purpose, although no notice is required in the event of a City emergency.

28. **Taxes.**

(a) If ad valorem taxes are assessed following any adjustment or reversal to the Sales and Use Tax Section 212.031 Florida Statutes whereby Lessee, as a renter of real property on which the following are placed: towers, antennas, cables, accessory structures, or equipment used in the provision of mobile communications services; is exempt from sales and use taxes, Lessee must pay the portion of taxes directly attributable to the Leased Premises.

(i) Lessor will provide to Lessee a copy of any notice, assessment, billing, pro-rata allocation calculation, if necessary, and any other documentation reasonably requested by Lessee to allow Lessee to evaluate the payment relating to ad valorem taxes for which Lessee is responsible under this Agreement within thirty (30) days of receipt of the same by Lessor.

(ii) Lessee will have no obligation to pay any ad valorem taxes until Lessee has received the notice, assessment or billing relating to such payment.

(iii) Lessee has the right, at its option and cost, to appeal, challenge or seek modification of any ad valorem tax assessment or billing for which Lessee is wholly or partly responsible for payment.

(iv) Lessor will reasonably cooperate with Lessee in filing, prosecuting and perfecting any appeal or challenge to ad valorem taxes including executing any consent to appeal or other similar document.

(b) Lessee must pay all personal property taxes assessed on, or any portion of such taxes attributable to, the Tower Facilities. Lessee must pay any increase in real property taxes levied against the Leased Premises directly attributable to Lessee's use of the Leased Premises. Lessor agrees to furnish proof and calculation, if necessary, of such increase to Lessee. Should Lessee fail to pay, when due, any personal property taxes affecting the Leased Premises or the

Easement(s), Lessor may, but is not obligated to, pay the taxes and increase future installments of rent by the amount of taxes paid by Lessor on Lessee's behalf.

(c) NOTE:Lessor is a Florida Municipality and therefore, is a tax-exempt entity.

29. **Other Rights Reserved by Lessor.** Besides all other rights reserved by Lessor in the Leased Premises, Lessor expressly reserves the right of ingress and egress for Lessor and its designees over the Easement(s) and the Site, but excluding the exclusive Leased Premises (except in the event of emergencies or with prior written consent of Lessee).

30. **Lien for Lessee Improvements.** Under Section 713.10, Florida Statutes, no interest of the Lessor will be subject to liens for improvements made by Lessee. Lessee must notify the contractor or subcontractor making improvements to the Leased Premises of this provision. The knowing or willful failure of Lessee to provide such notice to the contractor will render the contract between the Lessee and contractor voidable at the option of the contractor. No party, including materialmen, contractors, and subcontractors, may file a mechanic's or materialmen's lien, for performing labor or furnishing materials for the benefit of Lessee, to the Leased Premises. If a lien is filed, Lessee is obligated to:

(a) Within thirty (30) days of receipt of notice from Lessor of such lien, discharge, bond or otherwise remove the lien. Without obviating its obligation in the preceding sentence, Lessee may contest such lien by instituting appropriate legal proceedings;

(b) Indemnify, defend, and hold harmless Lessor, at Lessee's cost and expense, any action, suit, or proceeding which may be brought to enforce any such lien; and

(c) Pay any damages and attorney's fees incurred by Lessor and satisfactorily discharge any judgment entered.

Lessor will give Lessee notice of any such action, suit, or proceeding and Lessee may assert all defenses, counterclaims, offsets or any other claim of any nature. The terms and provisions of this Section will survive the termination of this Lease.

31. **Responsibility of Lessee/Lessor.**

(a) Lessee is in control or possession only of portions of the Site as noted in Exhibit "A." Lessee does not assume responsibility for the conduct, operation, or condition of portions of the Site not included within the terms of this Lease.

(b) Lessor is not responsible for the actions of Lessee, its employees, agents, contractors, or subcontractors. Lessee will indemnify and hold harmless Lessor against all liabilities, claims, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions, appeals and causes of action, including reasonable attorney's fees and costs arising out of Lessee's negligent or intentional acts or omissions with respect to the Leased Premises (except for injuries, damages or claims which result from the negligence of the Lessor). Lessee must promptly reimburse Lessor for any proration of insurance as required.

32. **Further Acts.** Lessor will cooperate with Lessee in executing any documents to protect Lessee's use of the Leased Premises and Easement(s) and to take such action as may be reasonably required to implement this Lease. Lessor will cooperate with and join in filing any applications on behalf of Lessee with Federal, State and local governmental authorities to enable Lessee to perpetuate the intended use of the Leased Premises.

33. **Miscellaneous.**

(a) The substantially prevailing party in any litigation arising under this Lease will be entitled to its reasonable attorney's fees and court costs, including appeals, if any.

(b) Each Party agrees to furnish to the other, within ten (10) days after request, such truthful estoppel information as the other may reasonably request.

(c) This Lease and its exhibits constitute the entire agreement and understanding of Lessor and Lessee regarding the subject of this Option and Ground Lease, and supersedes all offers, negotiations and other agreements. There are no other representations or understandings of any kind. Any amendments to the Lease must be in writing and executed by Lessor and Lessee.

(d) If either Lessor or Lessee is represented by a broker in this transaction, that Party is responsible for any fees due such broker and must hold the other Party harmless from any claims for commission.

(e) This Lease is construed under the laws of the state of Florida. Venue will be in the courts of Flagler County, Florida, and for federal actions, in Orlando, Florida. In the event of any dispute, the parties agree to waive all rights to demand a jury trial.

(f) If any term of this Lease is void or invalid, such invalidity will not affect the remaining terms of this Lease, which will continue in full force and effect.

(g) This Lease may be executed in two or more counterparts, all of which will be one and the same agreement and will become effective when one or more counterparts have been signed by each of the Parties.

(h) Each of the Parties represent and warrant they have the right, power, legal capacity and authority to enter into and perform their respective obligations under this Agreement.

(i) **Waiver of Compliance.** Any failure of Lessee to comply with any obligation, covenant, agreement or condition herein may be expressly waived by Lessor, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure.

34. **Indemnification.** Lessee agrees to protect, defend, reimburse, indemnify and hold harmless Lessor, its agents, employees and officers (the "Indemnified Parties"), against all claims, causes of actions, liabilities, expenses, losses, costs, fines and damages, including reasonable attorneys' fees at trial and on appeal, to the extent allowed by law, arising out of this Lease, and Lessee's

negligent or intentional acts or omissions with respect to the Leased Premises, Site, or Easement(s), excluding injuries caused by the negligent or willful misconduct of the Indemnified Parties. This Section also applies to claims arising out of contamination caused to the Site after the Commencement Date by the negligent or intentional acts or omissions of Lessee, its agents, or employees, including contamination of the soil or storm water by fuel, gas, chemicals, or other substances deemed by the Environmental Protection Agency to be environmental contaminants. Nothing in this Lease may be construed as a waiver of Lessor's limitation of liability as noted in Section 768.28(5), Florida Statutes.

35. **Headings.** Descriptive headings are for convenience only and shall not control or affect the meaning or construction of any provision of this Agreement.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, this Agreement is entered into the date first written above.

OPTIONOR/LESSOR:

Witness:

Witness:

CITY OF PALM COAST, FLORIDA

By: _____

Name: _____

Title: _____

Date: _____

OPTIONEE/LESSEE:

Witness:

Witness:

DIAMOND TOWERS V LLC

By: _____

Name: Michael G. Brett

Title: COO

Date: _____

EXHIBIT "A"

Description of Real Property

A PARCEL OF LAND LYING IN RESERVED PARCEL A, SECTION 25, AT PALM COAST, AS RECORDED IN MAP BOOK 9, PAGE 3 OF THE PUBLIC RECORDS OF FLAGLER COUNTY, FLORIDA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

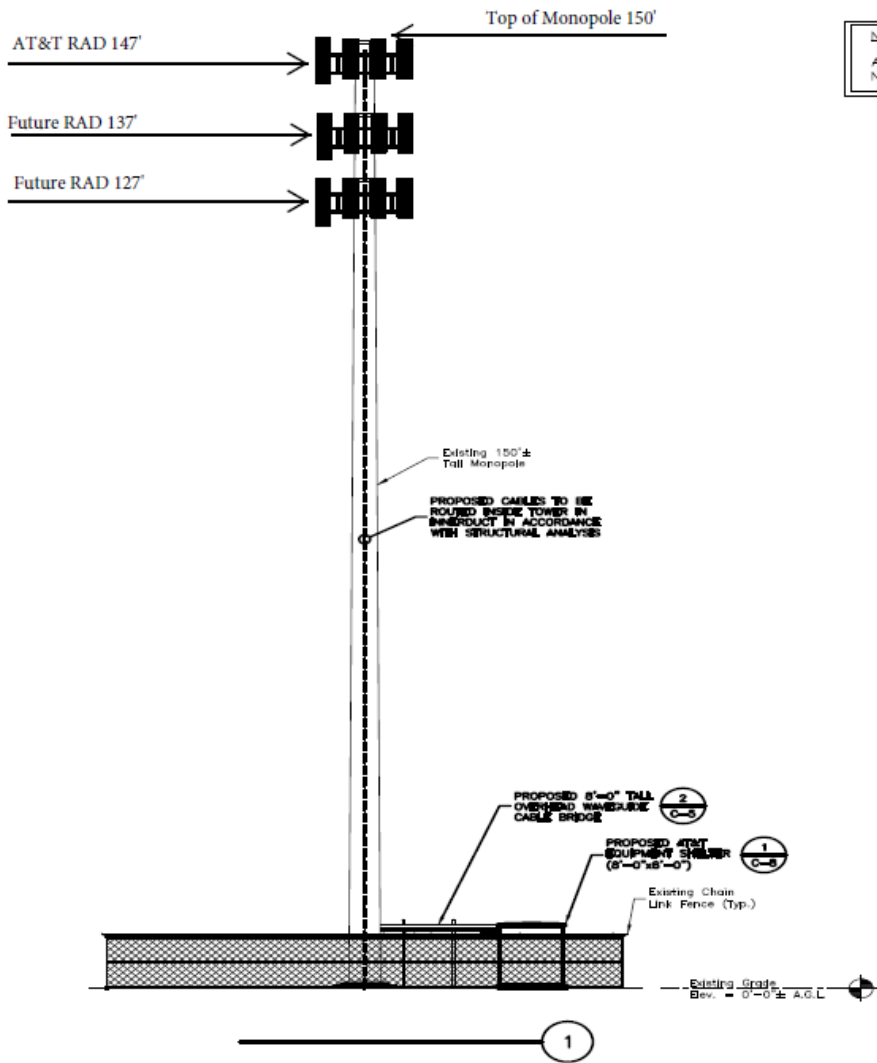
FROM A POINT OF REFERENCE BEING THE INTERSECTION OF THE SOUTHERLY RIGHT OF WAY OF PARKVIEW DRIVE (60' R/W) WITH THE EASTERLY RIGHT OF WAY OF BELLE TERRE PARKWAY (150' R/W) ALL ACCORDING TO SAID MAP BOOK 9, PAGE 3; THENCE NORTH 86°24'21" EAST 540.36 FEET ALONG SAID SOUTHERLY RIGHT OF WAY OF PARKVIEW DRIVE TO A POINT OF CURVATURE; THENCE NORTHEASTERLY 209.20 FEET ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 2350.00 FEET AND A CENTRAL ANGLE OF 05°06'02" TO THE POINT OF BEGINNING OF THIS DESCRIPTION; THENCE CONTINUE 193.70 FEET ALONG SAID CURVE TO THE LEFT HAVING A RADIUS OF 2350.00 FEET AND A CENTRAL ANGLE OF 04°43'24" TO A POINT OF INTERSECTION WITH THE EASTERLY BOUNDARY LINE OF SAID RESERVED PARCEL A; THENCE DEPARTING SAID SOUTHERLY RIGHT OF WAY OF PARKVIEW DRIVE ALONG THE EASTERLY BOUNDARY LINE OF RESERVED PARCEL A SOUTH 27°24'27" EAST 1183.51 FEET TO A POINT; THENCE DEPARTING SAID EASTERLY BOUNDARY LINE OF RESERVED PARCEL A NORTH 85°51'53" WEST 860.99 FEET; THENCE NORTH 02°45'42" EAST 361.29 FEET; THENCE SOUTH 88°42'02" EAST 197.53 FEET; THENCE NORTH 08°41'41" WEST 601.89 FEET TO THE POINT OF BEGINNING OF THIS DESCRIPTION.

TAX ID: 07-11-31-7025-00RPA-0010

BEING THE SAME PROPERTY CONVEYED TO CITY OF PALM COAST, FLORIDA, GRANTEE, FROM FLAGLER COUNTY, FLORIDA, GRANTOR, BY DEED RECORDED 09/21/2001, AS BOOK 770, PAGE 41 OF THE FLAGLER COUNTY RECORDS.



FL 111 DESIGN EASEMENT



NOTE:
 ALL INSTALLED EQUIPMENT IS NOT TO EXCEED 150'-0" A.G.L.

EXHIBIT "B"

Easement Agreement

PREPARED BY AND RETURN TO:
Diamond Towers V LLC
Attention: Legal Department
820 Morris Turnpike, Suite 104
Short Hills, New Jersey 07078

Site Name:
Parcel:

Cross Reference:
Deed Book: ____; Page ____, et. seq.
_____ County Clerk

ACCESS AND UTILITIES EASEMENT AGREEMENT

This Access and Utilities Easement Agreement (the "**Agreement**") dated the __ day of _____, 201__ ("**Effective Date**") is among CITY OF PALM COAST, FLORIDA ("**Grantor**"), and DIAMOND TOWERS V LLC, a Delaware limited liability company ("**Grantee**").

WHEREAS, the Grantor is the owner of certain property located in the City of Palm Coast, County of Flagler, State of Florida, which property is more particularly described on **Exhibit "A"** hereto ("**Grantor's Property**"). Grantee is leasing a portion of that certain property located adjacent to Grantor's Property ("**Grantee's Leased Property**"). Grantor and Grantee desire to enter into this Agreement for the purpose of creating certain easements to benefit the Grantee's Leased Property, as more particularly described hereinafter.

For and in consideration of One and 00/100 Dollars (\$1.00), and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee, intending to be legally bound, hereby agree as follows:

1. Grantor hereby grants, transfers and conveys to Grantee a nonexclusive easement (the "**Access Easement**"), for the benefit of the Grantee's Leased Property, over and across a portion of Grantor's Property (the "**Easement Area**"), to and from Grantee's Leased Property and a public right of way, for the purpose of providing access, ingress and egress to Grantee's Leased Property to and from a public right of way. The Easement Area is in the location shown on **Exhibit "B"**. The easement rights granted hereunder by Grantor to Grantee shall expressly include, without limitation, the right to free and unencumbered ingress and egress over and across the Easement Area.

2. Grantor hereby grants, transfers and conveys to Grantee a nonexclusive easement (the "**Utilities Easement**", and together with the Access Easement, collectively, the "**Easements**"), for the benefit of Grantee's Leased Property, over and across the Easement Area, for the purpose of installing, operating, maintaining and repairing communication and power utility lines and other such necessary utilities (the "**Facilities**") to service Grantee's Leased

Property. The easement rights granted hereunder by Grantor to Grantee shall expressly include, without limitation, the right to unencumbered ingress and egress over and across Grantor's Property to access the Facilities and the right to use, repair, replace, and maintain all Facilities hereafter placed in the Easement Area.

3. **Reservation of Rights.** Grantor hereby expressly reserves unto itself, its successors, assigns, grantees and invitees, the right, in its sole discretion, to use the Easement Area for any purpose not inconsistent with the rights herein granted to Grantee. In addition and not by limitation, but way of example, Grantor its successors, grantees, invitees and assigns, reserve the right from time to time to improve the Easement Area with pavement, curbing and landscaping and grant additional easements and licenses for access, and utilities or any other purposes as it may deem necessary, over, upon, across and under the Easement Area, provided that such easements or licenses do not unreasonably interfere with Grantee's use of the Easement Area pursuant to the terms hereof. No structures of any kind will be constructed in the Easement Area without the mutual agreement of the parties (not to be unreasonably withheld).

4. The Grantee and its assigns realize that the Grantor may request and obtain a relocation of the Easements. In the event the Grantor does request a relocation of the Easements, the Grantor must provide a substitute access easement and utility easement and must record said new easements in the public records of Flagler County, Florida, and shall improve the path located on said new easements to the current level of improvement enjoyed by the current Easements. Thereafter, Grantee, or its successors and assigns, shall remove by recordable release or quit-claim deed their interest in these current Easements if requested by the Grantor. Notwithstanding the above, all of Grantee's costs and expenses associated with relocating the Easements (including but not limited to costs and expenses associated with equipment removal and reconstruction) shall be paid in full by Grantor, and any said relocation of the Easements shall be conducted with minimal disruption to Grantee.

5. **Assignment.** Grantee may assign this Agreement under the following terms: 1) to an affiliate or subsidiary of Grantee in which subsidiary or affiliate Grantee or Grantee's direct or indirect parent retains at least a 50% ownership, and shall provide prior written notice of such assignment to Grantor, 2) to a party who acquires a majority of the assets of Grantee, or 3) Grantee may grant a security interest in this Agreement and the Tower Facilities, and may assign this Agreement and the Tower Facilities to any such holders of security interests, including their successors and assigns (hereinafter, collectively referred to as "Secured Parties"). In such event, Grantor shall execute such consent as may reasonably be required by Secured Parties. Grantee shall have the right, without Grantor's consent, to sublease or assign its rights under this Agreement and to permit any of its sublessees to in turn sublicense or sublease its interests, but any such sublease or assignment shall be subject to all terms and conditions of this Agreement. Upon assignment of all of its rights pursuant to this Agreement, and the execution of a written assumption of all of the terms and conditions of the Agreement by the assignee, Grantee shall be released from any further liability under this Agreement. Grantee shall have the right, without Grantor's consent, to sublease its rights under leases of Tower Facilities if allowed in the lease, but any such sublease shall be subject to all terms and conditions of this Agreement and the lease.

6. Termination and Amendments. This Agreement may be cancelled, changed, modified or amended, in whole or in part, in writing signed by the parties hereto or their respective successors and assigns.

7. Entire Agreement. Notwithstanding any verbal representation, this Easement constitutes the entire agreement between the parties. This Easement supersedes any and all prior representations, written or oral heretofore made by the parties concerning the subject matter of the Easement, and any such representations are null and void and of no force or effect whatsoever.

8. The Term of this Agreement shall be continuous, uninterrupted, and shall only expire: (a) upon notification from Grantee of termination of the Agreement; or (b) one (1) year after the Grantee, or its successors or assigns: (i) fails to have an interest in Grantee's Leased Property; (ii) does not have facilities or equipment located within Grantee's Leased Property, and (iii) no longer conducts operations within the Grantee's Leased Property.

9. Any notice sent pursuant to this Agreement shall be in writing and sent by telecopy, personal delivery or by reputable courier, or by depositing it with the United States Postal Service, certified or registered mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party. The initial addresses of the parties shall be as set forth below:

To Grantor:

City of Palm Coast
Attn: City Manager
160 lake Avenue
Palm Coast, FL 32164

To Grantee:

Diamond Towers V LLC
Attention: Legal Department
820 Morris Turnpike
Suite 104
Short Hills, New Jersey 07078

10. The Easements granted herein shall be appurtenant to and shall run with Grantee's Leased Property, and shall be binding upon and inure to the benefit of each party hereto, its successors, assigns, mortgagees, tenants, lessees, licensees, contractors, subcontractors, agents, representatives and invitees.

11. This Agreement shall be governed by and enforced in accordance with 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.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

Witness:

**“GRANTOR”
CITY OF PALM COAST, FLORIDA**

Print:

Exhibit Only – Not for Signature

Name: _____

Title: _____

Date: _____

Print:

Attest:

Date: _____

STATE OF _____)

) ss:

COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 201_, by _____, City Manager of the City of Palm Coast, Florida, who is personally known to me.

Notary Public: _____

My Commission Expires: _____

Witness:

“GRANTEE”

Diamond Towers V LLC

Print:

Exhibit Only – Not for Signature

Name: _____

Title: _____

Date: _____

Print:

STATE OF NEW JERSEY)
) ss:
COUNTY OF ESSEX)

On the ___ day of _____ in the year 201___, before me, the undersigned, a notary public in and for said state, personally appeared Michael G. Brett personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public: _____
My Commission Expires: _____

EXHIBIT "A"

TO ACCESS AND UTILITIES EASEMENT AGREEMENT

Description of Grantor's Property

EXHIBIT "B"

TO ACCESS AND UTILITIES EASEMENT AGREEMENT

Easement Area

EXHIBIT "C"

Site:

MEMORANDUM OF LEASE

This Memorandum of Lease is made on _____, 201_, by and between the CITY OF PALM COAST, as Lessor, at 160 Lake Avenue, Palm Coast, Florida, 32164, and DIAMOND TOWERS V LLC, as Lessee, at 820 Morris Turnpike, Suite 104, Short Hills, NJ 07078.

1. Lessor and Lessee are parties to an Option and Ground Lease Agreement dated _____, 201_ (the "Lease Agreement"); the terms and provisions of which are incorporated by this reference. The premises covered by the Lease Agreement are in the _____, as described in the legal description attached as **Exhibit "A"** ("Leased Premises").
2. Under the Lease Agreement, Lessor has granted to Lessee an easement for ingress, egress and utilities for the duration of the Lease Agreement over those lands more particularly described on **Exhibit "B,"** as attached. The easement rights include the right and authority of Lessee to grant or assign to third parties all or some of the easement rights granted to Lessee, subject to the written consent of Lessor.
3. The Lease Agreement provides for an initial term of five (5) years which commenced on _____. The Lease provides for nine (9) additional five (5) year renewal terms, which will occur automatically, unless Lessee delivers written notice of intent not to renew to Lessor thirty (30) days prior to the expiration of the initial term, or the renewal term then in effect.
4. Under Section 713.10, Florida Statutes, the Lease Agreement provides that the interest of the Lessor is not subject to liens for improvements made by Lessee, and that Lessee must notify any contractor making such improvements of this provision of the Lease Agreement.

IN WITNESS WHEREOF, the Parties hereto have executed this Memorandum of Lease as of the date first written above.

LESSOR:

Witness:

Witness:

CITY OF PALM COAST, FLORIDA

By: Exhibit Only – Not for Signature

Name:

Title:

Date:

STATE OF FLORIDA
COUNTY OF _____

I, the undersigned Notary Public for the County and State, do certify that _____, as _____, appeared before me this day, and acknowledged the due execution of the foregoing instrument on behalf of the company.

WITNESS my hand and notarial seal, this ___ day of _____ 201_.

Notary Public: _____

Print Name: _____

{affix notary stamp/seal}

My Commission Expires: _____

LESSEE:

DIAMOND TOWERS V LLC

By: Exhibit Only – Not for Signature

Name:

Title:

Date:

Witness:

Witness:

STATE OF NEW JERSEY)
) ss:
COUNTY OF ESSEX)

On the ___ day of _____ in the year 201__, before me, the undersigned, a notary public in and for said state, personally appeared Michael G. Brett personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual or the person upon behalf of which the individual acted, executed the instrument.

Notary Public: _____
My Commission Expires: _____

EXHIBIT “D”

Rent Schedule

Rent: -Rent shall be as set forth in Section 2 Pricing Terms of the Wireless Facilities Contract dated May 12, 2017 which section is hereby attached hereto Exhibit “G”.

Rent is payable to the City of Palm Coast, Florida. Lessor must provide Lessee with an accurate and executed W-9 Form to facilitate payment.

“Sublease Fees” shall mean all rents, licenses and other fees (but excluding utilities, taxes and similar expense reimbursements to Lessee which are specifically identified in a sublease as being charged in addition to rent or license fees) actually received by the Lessee pursuant to a particular Sublease during the applicable month. In no event, shall Lessee have the right to deduct expenses from Sublease Fees.

“Broadband Tenant” shall mean as Cellular/PCS providers such as Alltel, AT&T, Cingular, Sprint, Nextel, T-Mobile, MetroPCS and Verizon.

“Non-Broadband Tenant” shall mean 2-way, paging, and internet providers.

EXHIBIT “E”

FORM OF TRANSFER AGREEMENT

AGREEMENT OF ASSIGNEE/SUBLESSEE

Under this Agreement of Assignee/Sublessee, made this ____ day of _____, 20____, _____ (“Assignee/Sublessee”) acknowledges and agrees as follows:

1. Assignee/Sublessee acknowledges that Diamond Towers V LLC is transferring a portion of its interest in the Leased Premises to Assignee/Sublessee as reflected in Exhibit _____.

2. Assignee/Sublessee acknowledges that Diamond Towers V LLC and the City of Palm Coast, have entered into an Option and Ground Lease Agreement dated as of _____, 20__, (copy attached) which governs the Leased Premises and Easement(s). The Memorandum of Lease (not the Option and Ground Lease Agreement) is recorded in O.R. Book _____, Page _____, Public Records of Flagler County, Florida. Assignee/Sublessee acknowledges having received a copy of said Option and Ground Lease Agreement and understands all of the terms, provisions, conditions, and limitations of that Agreement.

3. In consideration for receiving the benefits of the transfer of a portion of the Leased Premises and the accompanying Easement(s) and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Assignee/Sublessee agrees to be bound by all of the terms, provisions, conditions, and limitations of that Agreement as the same may apply to the Leased Premises and the accompanying Easement(s) owned by Diamond Towers V LLC or in which Diamond Towers V LLC may have an interest, including the condition that the undersigned Assignee/Sublessee obtained this same agreement from any subsequent Assignee/Sublessee.

Exhibit Only – Not for Signature

(print name)

Exhibit “F”

INSURANCE

(a) The Lessee shall obtain or possess and continuously maintain the following insurance coverage, from a company or companies, with a Best Rating of A- or better, authorized to do business in the State of Florida and in a form acceptable to the Lessor and with only such terms and conditions as may be acceptable to the Lessor:

(1) Workers Compensation/Employer Liability: The Lessee shall provide Worker Compensation insurance for all employees engaged in the work under this Agreement in accordance with the laws of the State of Florida. Employers' Liability Insurance at limits not less than the following:

\$500,000 Each Accident
\$500,000 Disease Each Employee
\$500,000 Disease (Policy Limit)

(2) Comprehensive General Liability: The Lessee shall provide coverage for all operations including, but not limited to, contractual, independent contractor, products and complete operations and personal injury with limits not less than the following:

\$1,000,000 Bodily Injury & Property Damage - each occurrence
\$2,000,000 General Aggregate

(3) Comprehensive Business Automobile Liability: The Lessee shall provide complete coverage with a combined single limit of not less than \$1,000,000 Bodily Injury and Property Damage in accordance with the laws of the State of Florida, as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles.

(4) Professional Liability: The Lessee shall provide professional liability insurance as well as errors and omission insurance in a minimum amount of \$1,000,000 CSL or its equivalent, with a combined single limit of not less than \$1,000,000, protecting the Lessee against claims of the City for negligence, errors, or omissions in the performance of services to be performed and furnished by the Lessee.

(5) Other Required Insurance Coverage: Where unusual operations are necessary to complete the work, such as use of aircraft or watercraft, use of explosives, and any high-risk circumstances. No aircraft, watercraft or explosives shall be used without the express advance written approval of the Lessor which may, thereupon, required additional insurance coverage's.

(b) All insurance other than Workers Compensation and Professional Liability that must be maintained by the Lessee shall specifically include the Lessor as an additional insured. All insurance minimum coverages extend to any subcontractor, and the Lessee shall be responsible for all subcontractors.

(c) The Lessee shall provide Certificates of Insurance to the Lessor evidencing that all such insurance is in effect prior to the issuance of the first Work Order under this Agreement. These

Certificates of Insurance shall become part of this Agreement. Neither approval by the Lessor nor failure to disapprove the insurance furnished by a Lessee shall relieve the Lessee of the Lessee's full responsibility for performance of any obligation including the Lessee's indemnification of the Lessor under this Agreement. If, during the period which an insurance company is providing the insurance coverage required by this Agreement, an insurance company shall: (1) lose its Certificate of Authority, (2) no longer comply with Section 440.57, Florida Statutes, or (3) fail to maintain the requisite Best's Rating and Financial Size Category, the Lessee shall, as soon as the Lessee has knowledge of any such circumstance, immediately notify the Lessor and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Agreement. Until such time as the Lessee has replaced the unacceptable insurer with an insurer acceptable to the Lessor, the Lessee shall be deemed to be in default of this Agreement.

(d) Intentionally Deleted.

(e) The Lessee shall provide Certificate of Insurance directly to the City's Designated Representative. The certificates shall clearly indicate that the Lessee has obtained insurance of the type, amount, and classification required by this Agreement.

(f) Nothing in this Agreement or any action relating to this Agreement shall be construed as the Lessor waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes.

(g) The Lessor shall not be obligated or liable under the terms of this Agreement to any party other than the Lessee. There are no third-party beneficiaries to this Agreement.

(h) The Lessee is an independent Agreement or and not an agent, representative, or employee of the Lessor. The Lessor shall have no liability except as specifically provided in this Agreement.

(i) All insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by the Lessor.

Exhibit “G”

Wireless Facilities Contract

[attachment set forth on the following pages]

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: [Signature]
Jim Landon, City Manager 5/12/17

ATTEST:

[Signature]
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.



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

WITNESSES:

Jessica Weinberg
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]

Exhibit B
CITY Sites

<i>Name of tower</i>	<i>location</i>	<i>Tower owned by</i>	<i>Land owned by</i>	<i>carriers</i>
A1A Water Tank	5636 N. Ocean Shore Blvd	COPC	COPC	1 Sprint 2 T-Mobile 3 Verizon
Ralph Carter Park	1385 Rymfire Drive	COPC	COPC	1 MetroPCS
Utility Drive	22 Utility Drive	COPC	COPC	1 HEECSA
Palm Coast Tennis Center	1290 Belle Terre Pkwy	COPC	COPC	1 Verizon 2 MetroPCS
Indian Trails Sports Complex	5455 Belle Terre Pkwy	T-Mobile	COPC	1 T-Mobile
Frieda Zamba Pool	339 Parkview Drive	T-Mobile	COPC	1 T-Mobile 2 MetroPCS 3 Verizon

Exhibit C
CITY Towers (4)

<i>Name of tower</i>	<i>location</i>	<i>Tower owned by</i>	<i>Land owned by</i>	<i>carriers</i>
A1A Water Tank	5636 N. Ocean Shore Blvd	COPC	COPC	1 Sprint 2 T-Mobile 3 Verizon
Ralph Carter Park	1385 Rymfire Drive	COPC	COPC	1 MetroPCS
Utility Drive	22 Utility Drive	COPC	COPC	1 HEECSA
Palm Coast Tennis Center	1290 Belle Terre Pkwy	COPC	COPC	1 Verizon 2 MetroPCS

Exhibit D

Insurance

INSURANCE

(a) The CONSULTANT shall obtain or possess and continuously maintain the following insurance coverage, from a company or companies, with a Best Rating of A- or better, authorized to do business in the State of Florida and in a form acceptable to the CITY and with only such terms and conditions as may be acceptable to the CITY:

(1) Workers Compensation/Employer Liability: The CONSULTANT shall provide Worker Compensation insurance for all employees engaged in the work under this Contract in accordance with the laws of the State of Florida. Employers' Liability Insurance at limits not less than the following:

\$500,000 Each Accident

\$500,000 Disease Each Employee

\$500,000 Disease (Policy Limit)

(2) Comprehensive General Liability: The CONSULTANT shall provide coverage for all operations including, but not limited to, contractual, independent CONTRACTOR, products and complete operations and personal injury with limits not less than the following:

\$1,000,000 Bodily Injury & Property Damage - each occurrence

\$2,000,000 General Aggregate

(3) Comprehensive Business Automobile Liability: The CONSULTANT shall provide complete coverage with a combined single limit of not less than \$1,000,000 Bodily Injury and Property Damage in accordance with the laws of the State of Florida, as to the ownership, maintenance, and use of all owned, non-owned, leased or hired vehicles.

(4) Professional Liability: The CONSULTANT shall provide professional liability insurance as well as errors and omission insurance in a minimum amount of \$1,000,000 CSL or its equivalent, with a combined single limit of not less than \$1,000,000, protecting the CONSULTANT against claims of the City for negligence, errors, or omissions in the performance of services to be performed and furnished by the CONSULTANT.

(5) Other Required Insurance Coverage: Where unusual operations are necessary to complete the work, such as use of aircraft or watercraft, use of explosives, and any high risk circumstances. No aircraft, watercraft or explosives shall be used without the express advance written approval of the CITY which may, thereupon, required additional insurance coverage's.

(b) All insurance other than Workers Compensation and Professional Liability that must be maintained by the CONSULTANT shall specifically include the CITY as an additional insured. All insurance minimum coverage's extend to any subcontractor, and the CONSULTANT shall be responsible for all subcontractors.

(c) The CONSULTANT shall provide Certificates of Insurance to the CITY evidencing that all such insurance is in effect prior to the issuance of the first Work Order under this Contract. These Certificates of Insurance shall become part of this Contract. Neither approval by the CITY nor failure to disapprove the insurance furnished by a CONSULTANT shall relieve the CONSULTANT of the CONSULTANT'S full responsibility for performance of any obligation including the CONSULTANT'S indemnification of the CITY under this Contract. If, during the period which an insurance company is providing the insurance coverage required by this Contract, an insurance company shall: (1) lose its Certificate of Authority, (2) no longer comply with Section 440.57, Florida Statutes, or (3) fail to maintain the requisite Best's Rating and Financial Size Category, the CONSULTANT shall, as soon as the CONSULTANT has knowledge of any such circumstance, immediately notify the CITY and immediately replace the insurance coverage provided by the insurance company with a different insurance company meeting the requirements of this Contract. Until such time as the CONSULTANT has replaced the unacceptable insurer with an insurer acceptable to the CITY, the CONSULTANT shall be deemed to be in default of this Contract.

(d) Deleted.

(e) The CONSULTANT shall provide Certificate of Insurance directly to the City's Designated Representative. The certificates shall clearly indicate that the CONSULTANT has obtained insurance of the type, amount, and classification required by this Contract.

(f) Nothing in this Contract or any action relating to this Contract shall be construed as the CITY waiver of sovereign immunity beyond the limits set forth in Section 768.28, Florida Statutes.

(g) The CITY shall not be obligated or liable under the terms of this Contract to any party other than the CONSULTANT. There are no third party beneficiaries to this Contract.

(h) The CONSULTANT is an independent Contractor and not an agent, representative, or employee of the CITY. The CITY shall have no liability except as specifically provided in this Contract.

(i) All insurance shall be primary to, and not contribute with, any insurance or self-insurance maintained by the CITY.

Exhibit E
Initial Budget

Scope of Work – Inspections and Maintenance on CITY Towers

Regular Maintenance	
Work	Estimated Quarterly Bill per Tower
Weed Mitigation and Road Maintenance	\$225
Weed Mitigation only	\$150
Light Replacement	N/A

Other Services	
Work	Estimated Price
TIA Inspection	\$1,950 every 5 years
Flag Maintenance and Replacement	\$1,000 per year

Note: Rates listed above are estimates and consistent with our current experience in the Florida market. This exhibit will be finalized and agreed with CITY following the completion of the inventory described in Section I.b. of this Agreement.

PROPERTY OWNER APPROVAL _____ DATE _____

TOWER OWNER APPROVAL _____ DATE _____



REV 3: MOVED TOWER LOCATION
 REV 2: MOVED TOWER LOCATION
 REV 1: REVISED PER COMMENTS FROM DIAMOND COMMUNICATIONS

JOB No.:	168782021
DATE:	11/08/19
REV.:	3
DRAWN:	REL
CHECKED:	KRM

Kimley»Horn
 11720 AMBER PARK DRIVE, SUITE 600, ALPHARETTA, GA 30009
 PHONE: 770-619-4280 WWW.KIMLEY-HORN.COM

Site Visit Attendees:
 TOM WANIEWSKI

DIAMOND TOWERS IV LLC
 PROPOSED MONOPOLE
 SITE NAME: FRIEDA ZAMBA POOL
 SITE NUMBER: TBD
 339 PARKVIEW DRIVE
 PALM COAST, FL 32164
 FLAGLER COUNTY

OVERALL SITE PLAN SHEET
 SCALE: 1" = 30'
 NOT FOR CONSTRUCTION 140

K:\A_T\Wireless\Diamond Communications\Frieda Zamba Pool\CAD\Diamond-Frieda Zamba Pool_LE_R1.dwg November 8, 2019 7:13 AM by: Xavier Davis