

## WIRELESS FACILITIES CONTRACT

**THIS WIRELESS FACILITIES CONTRACT** (“CONTRACT”) is made as of the \_\_\_\_ day of \_\_\_\_\_, 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](mailto: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**

**ATTEST:**

By: \_\_\_\_\_  
Milissa Holland, Mayor

\_\_\_\_\_  
Virginia Smith, CMC, CPO

STATE OF FLORIDA  
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2017, by MILISSA HOLLAND, Mayor, of the City of Palm Coast, who is personally known to me.

\_\_\_\_\_  
Notary Public, State of Florida  
Print name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**WITNESSES:**

**DIAMOND TOWERS IV LLC**, a Delaware  
limited liability company

\_\_\_\_\_

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

STATE OF NEW JERSEY  
COUNTY OF ESSEX

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

\_\_\_\_\_  
Notary Public – State of New Jersey

Print name: \_\_\_\_\_

My commission expires:

EXHIBIT "A"

CONSULTANT'S RESPONSE TO RFP IT-16-01

*[attachment set forth on the following pages]*



*Peter Woodbury  
President, Land Acquisitions and Site Management  
Diamond Communications LLC  
820 Morris Turnpike, Suite 104  
Short Hills, NJ 07078*

November 2, 2015

Brian Rothwell  
Purchasing Manager  
City of Palm Coast  
Purchasing and Contracts Management Division  
160 Lake Avenue  
Palm Coast, FL 31164

Mr. Rothwell:

We are pleased to attach our response to your Request for Proposal (“RFP”). Diamond is a leading US tower company specializing in tower related services, marketing, management and tower development. Diamond and its senior executives have managed more than 200,000 properties throughout the US for utilities, individuals, commercial enterprises, real estate investment trusts, municipalities and railroads. Diamond is actively building towers in Florida and surrounding states and has longstanding relationships with the four major carriers.

As described in the RFP, we believe that we are well positioned to help the City of Palm Coast (the “City”) with its wireless communications program. Diamond has significant experience consulting on the available opportunities for wireless development for clients in the public and private sectors. Diamond also has a history of identifying and mapping coverage gaps for our clients and the wireless carriers, developing and executing marketing plans targeted at all the major carriers and other parties and creating long term value through revenue from maximizing existing wireless communications infrastructure and our new tower build program.

Wireless carriers are expected to continue to invest heavily in wireless networks including new technology and additional wireless sites. The demand for data is accelerating and wireless networks along busy interstates and populous areas are already over capacity in many cases. The attached RFP describes how Diamond and the City can take advantage of this trend to create long term value.

Our collective experience of (i) managing wireless infrastructure on behalf of third parties across much of the country; (ii) developing and building communication towers for all of the major wireless carriers; (iii) having expertise in developing solutions in areas with difficult zoning or other constraints and (iv) providing a consistent ‘hands-on’ approach from our senior management will distinguish Diamond from other potential partners and provide a strong foundation for a successful partnership.

We hope that the proposal meets the requirements of the City and would be happy to discuss in person or over the phone at your convenience.

Kind regards,

Peter Woodbury

# City of Palm Coast



## REQUEST FOR PROPOSAL

for

Wireless Telecommunication Consulting Services

RFP IT-16-01

from

## Diamond Communications LLC



**Contact Name:** Peter Woodbury

**Address:** 820 Morris Turnpike, Suite 104, Short Hills, NJ 07078

**E-Mail:** pwoodbury@diamondcomm.com

**Telephone Number:** 973-544-6822

**Date:** November 2, 2015



## 1. Executive Summary

Diamond Communications LLC on behalf of itself and its affiliates (“Diamond”) believes that, as a leading US tower company specializing in tower related services, marketing and new tower development, it is well positioned to successfully provide consulting services to the City of Palm Coast (the “City”). The objective of the arrangement is to identify opportunities and develop strategies to increase the revenue from the current tower program, increase the visibility of the City’s current sites through an extensive marketing program, find potential locations and infrastructure for additional wireless telecommunications equipment (i.e. towers, small cell sites and outdoor wireless systems, etc.) and otherwise enhance the City’s position with respect to wireless communications.

The tower industry is expanding rapidly and Diamond has the resources and expertise to advise the City on its tower program. By 2018, the four major U.S. carriers are expected to develop over 10,000 new macro telecommunications sites and potentially hundreds and thousands of small cell sites to expand their network and meet the rapidly growing data demand of their customers. The City’s properties could provide attractive solutions to carrier coverage issues in Flagler County. Our collective experience and keen understanding of industry trends make Diamond an effective counterparty to help the City achieve its wireless communication objectives.

Data demands of the wireless carriers’ customers are growing rapidly; mobile data traffic is predicted to increase by 6x from 2014 to 2019. To continue meeting these data demands, the carriers will have to expand their existing wireless networks in more efficient and creative ways. Upcoming large-scale network expansion will require carriers to rely on and adopt new technologies for distributing data capacity, including small cells for network densification in highly trafficked areas (commercial districts, transport hubs, etc.) and outdoor distributed antenna systems (ODAS) for large confined public areas (such as stadiums) and neighborhoods. Diamond assists the carrier in deploying all relevant technologies and is adept at dealing with sites with significant constraints and difficult zoning issues. Diamond will take advantage of the City’s existing infrastructure suitable for wireless infrastructure deployment, while always considering the aesthetics of the City and ongoing coverage needs.

Diamond and its professionals have had historical success with property developers, commercial property managers and companies in many industries including utilities, railroads and hospitals. Some of our managed properties have a significant amount of existing infrastructure for collocation opportunities and others have attractive land sites for new development. We have agreements in place with the following large national and regional owners of available wireless sites and infrastructure: (i) the Ohio Turnpike and Infrastructure Commission (“OTIC”) communication towers across an entire state turnpike; (ii) OUTFRONT Media LLC’s (“OUTFRONT”) 25,000+ billboards throughout the US-including five in the City; (iii) InSite Mediacom’s billboards across the southeast; (iv) First Energy Corp.’s (“First Energy”) towers and infrastructure for its ten electric utility companies, which cover 6 million customers. Diamond is currently in late-stage discussions to manage more than 3,000 miles of rights-of-way for a railroad and has been working with a National Park to develop towers and their communication infrastructure across their properties.

Diamond has significant experience writing and negotiating leases with carriers, tower developers and property owners. We actively market sites and towers to carriers for collocation and can provide the City with fair-market assessments of existing leases and revenue streams and identify opportunities to improve upon the current position. We are experienced in capitalizing on existing infrastructure—such as water towers and other facilities—to increase data coverage and bring in additional revenue. The breadth of our institutional knowledge of the wireless industry will provide the City with a team of wireless experts that will be able to successfully expand the City’s current program and maximize its potential.

## **2. Project Approach**

- We have included the City’s project approach outline in this RFP to serve as an index. Listed in **bold** next to the City’s requests are the locations of the line items (e.g. Phase I, Item 1 can be found in the **Phase I: Existing Ordinance Review** section of the RFP). Our Project Approach response begins on Page 5.
  - Phase I – Wireless Telecommunications Development and Marketing Plan:
    1. Review existing City ordinances and recommend revisions to reflect best management practices that are compliant with current federal, state and local laws and meet quality of life expectations for Palm Coast. **(Discussed in Phase I: Existing Ordinance Review)**
    2. Inventory and map all existing tower facilities in and around Palm Coast. **(Discussed in Phase I: Information Consolidation and Existing Lease Review)**
    3. Identify and map the coverage areas of existing City owned tower facilities. **(Discussed in Phase I: Existing Lease Review)**
    4. Identify and map the coverage areas of all wireless telecommunication service providers in and around Palm Coast. **(Discussed in Phase I: Existing Lease Review)**
    5. Identify and map all City or school board owned sites that are potentially suitable for WCF site development. **(Discussed in Phase I: Existing Lease Review)**
    6. Develop ranking criteria to reflect marketability of existing and potential WCF sites. **(Discussed in Phase I: The Report)**
    7. Generate maps and reports of the ranked potential WCF sites. **(Discussed in Phase I: Existing Lease Review and The Report)**
    8. Develop build-out strategies and marketing plan for the four (4) assets listed below:
      - Asset 1: Four City-owned cell tower spaces that we lease to various carriers **(Discussed in Phase I: Marketing Plan)**
      - Asset 2: Two cell towers owned by other agencies on leased City property (specifically Indian Trails Sports Complex & Frieda Zamba pool) (With this asset the City collects land lease fees and carrier fees.) **(Discussed in Phase I: Marketing Plan)**

- Asset 3: Other City-owned facilities, including water tanks, municipal buildings and City-owned real-estate **(Discussed in Phase I: Marketing Plan)**
  - Asset 4: All properties owned by Flagler Schools that are within or around the Palm Coast city limits **(Discussed in Phase I: Marketing Plan)**
- 9. Provide cost benefit and risk analysis associated with the strategies developed in Item 8. **(Discussed in Phase I: The Report)**
- 10. Provide a timeline of implementation tasks to execute the Wireless Communications Development and Marketing Plan. **(Discussed in Phase I: The Report)**
- 11. Provide a draft report for City staff review. The report should tie all factors listed above into one cohesive development and marketing plan. **(Discussed in Phase I: The Report)**
- 12. Provide a final report which incorporates City staff review and comments. In addition, all original work materials should be provided in the original editable format (e.g. maps in ArcGIS format). **(Discussed in Phase I: The Report)**
- Phase II – Implementation:
  1. Contact cellular carriers and/or tower providers to generate interest and market assets identified in Phase I. **(Discussed in Phase II: Execution of Marketing Plan)**
  2. Prepare pursuit packages and solicit wireless telecommunication service providers. **(Discussed in Phase II: Execution of Marketing Plan)**
  3. Prepare lease agreements. **(Discussed in Phase II: Administration and Accounting)**
  4. Provide expert advice to City staff and City Council as needed. **(Discussed in Phase II: Ongoing Collaboration with the City and the Community)**
  5. Coordinate with other governmental agencies as needed. **(Discussed in Phase II: Ongoing Collaboration with the City and the Community)**
  6. Attend public meetings and workshops as needed. **(Discussed in Phase II: Ongoing Collaboration with the City and the Community)**
- **Phase I:**
  - **Information Consolidation:** Diamond would work with the City to consolidate all information regarding existing leases and wireless installations as well as the City’s existing structures and properties available for wireless development. Diamond will collect information and design a database to meet the specific needs of the City. The information will be tracked, analyzed and presented in a manner to be agreed upon with the City.
  - **Existing Lease Review:** Using our knowledge of the wireless collocation market, we will determine whether each individual lease is generating revenue consistent with

market rates. Diamond's in-house lawyers, business and engineering teams would review the City's existing leases to determine whether any opportunities to negotiate enhanced terms exist. We would examine the existing wireless installations to determine if the carriers have any unauthorized equipment on the site or are engaging in unauthorized use of the City's property. If Diamond determines the carriers are not satisfying the contractual agreement, Diamond would work with the City to develop a strategy to enhance terms, including rent adjustments, so that the City can effectively maximize its market competitiveness and future leasing opportunities. Additionally, Diamond would also consult the City on how to renegotiate the leases at the end of the current lease term and be willing to take an active role in any renegotiations, if requested.

- **Existing Ordinance Review:** Diamond's legal team would review City ordinances to confirm adherence to federal, state and local laws and meet the City's objectives for its residents. Diamond would take care to ensure that if revisions are necessary they are crafted in collaboration with the City staff and that all modifications reflect the City's high quality of life standards. Diamond currently conducts business in all fifty states and has a legal team responsible for ensuring compliance with all applicable laws and regulations.
  
- **Site Inventory:** On the City's existing infrastructure (including sites with wireless tenants) and all City-owned parcels available for development, Diamond would perform a site inventory which documents the specific attributes, relevant to the wireless carriers' network expansion plans, for each site. The site inventory will consist of the following information:
  - Site Inventory Form
  - Data Worksheet (See Appendix A for example)
    - This will include relevant demographics, traffic and business counts in areas surrounding potential development sites (WCF sites).
  - Site Directions
  - Street Map
  - Topography Map
  - Photographs
  - List of Competitive Structures
    - This will include mapping and identifying the coverage areas of wireless telecommunication service providers in and around Palm Coast.
  - Carrier Coverage Maps

Additionally, Diamond would identify City structures where equipment installed for the City/State's use would be most likely to attract additional carrier collocations.

- **Marketing Plan:** Diamond has extensive experience developing marketing plans for public agencies and corporations. Once the site inventory is complete, we would create a customized marketing plan for the City. We would work to ensure that every wireless communication site is marketed proactively to all the major carriers and other users of wireless infrastructure (first responders, satellite radio, etc.) to help solve network issues for the relevant carrier. Diamond sees the entirety of the City’s portfolio—both the current wireless communication sites and potential wireless communication sites—as having the ability to generate carrier interest. Individual marketing plans will be deployed for the various types of assets, however at times, it may prove best to market the assets as a holistic grouping of available wireless communication sites to help solve larger scale network issues to the relevant carriers. As part of the marketing plan, Diamond would begin to work with the City’s zoning department to design potential solutions based on existing guidelines and constraints.
  - Asset 1: Diamond would create unique marketing plans for each of the towers to capitalize on in existing wireless coverage gaps. We would prepare to meet with the carriers to market the sites for collocation and to introduce the carriers to the City’s entire portfolio. In addition, through our site inventory process, we would review existing wireless arrangements to identify additional revenue opportunities.
  - Asset 2: Diamond would review the leases to understand the relevant rights and obligations of the parties, assess the local competitive situation and develop options for consideration to enhance revenue and other existing terms.
  - Asset 3: Upon completion of the site inventory, Diamond would discuss potential wireless communication sites with the City. With the City’s approval, Diamond would begin to develop marketing materials for any sites that both Diamond and the City determine to be potential wireless communication sites.
  - Asset 4: Upon completion of the site inventory, Diamond would discuss potential wireless communication sites with the City. With the City’s approval, Diamond would begin to develop marketing materials for any sites that both Diamond and the City determine to be potential wireless communication sites. Diamond will also meet with administrators and other parties associated with the school.
  - If relevant for the City, Diamond would design wireless telecom installations to meet the needs of first responders, emergency networks and other municipal needs.
- **The Report:** After completing the site inventory and marketing plan, Diamond would prepare a summary report of our findings—including available options and our

recommendations. The report would also contain an analysis of additional sites which we believe are attractive for wireless infrastructure development. With respect to the existing leases, Diamond will review the documents to understand the relevant rights and obligations of the parties, assess the local competitive situation and develop options for consideration to enhance revenue and existing terms and develop a ranking system will be used to determine the marketability of existing and potential wireless communication sites. We would also include a comprehensive timeline for the execution of all tasks associated with Phases I and II (See Appendix B). A draft of the report will be presented to the City. Per approval of the final report, our business development managers would execute the strategy by engaging with the relevant existing tenant space, renegotiating leases on the City's behalf, as appropriate, and initiate marketing efforts with carriers in the relevant offices to create new opportunities for wireless revenue streams on available sites.

- **Phase II:**

- **Execution of Marketing Plan:**

- **Media Release:** Diamond will initiate an information campaign announcing the availability of the City sites for wireless development. This campaign may include press releases to industry publications, face-to-face meetings with the major wireless carriers and other interested parties and usage of other appropriate outlets. The City will review/approve any public press releases and marketing materials in advance.
- **Marketing Literature:** Diamond will develop marketing material designed specifically for the City's properties. Information collected in the site inventory will be discussed in meetings involving Diamond's national and local marketing representatives. Marketing Literature will be provided by Diamond, which will include technical data, maps and other pertinent information regarding the sites. Marketing Literature will detail to carriers and other interested parties the unique advantages of developing towers and collocating on the City's existing infrastructure and properties.
- **Information Management – Site Inventory:** Data collected from the Site Inventory process will be incorporated into Diamond Site Management files. Selected portions of this information will be made available to Diamond, the City and members of the wireless community via our website [www.diamondcomm.com](http://www.diamondcomm.com). On the website, the City's sites and related information will be displayed to carriers seeking new tower development/collocation. Diamond will ensure that the information that it manages for the City is accessible to the City for its own uses.

- **Relationship Building with Regional Offices of the Carriers:** Diamond would market the sites to relevant national and regional managers of all potential users.
- **Ongoing Collaboration with the City and the Community:** Diamond would take all substantive indications of interest to the City for approval and will serve as a liaison between the City, other governmental agencies and the interested party. As we have done with other clients, such as First Energy and the Ohio Turnpike, we will work diligently to advance the City's objectives and ensure that the concerns and priorities of the City are at the forefront of our dealings with interested parties. We would also provide expert advice to the City staff and City Council as needed.

We have significant experience cooperating with all types of parties affected by our installations, from building and zoning departments to concerned parents. We want to ensure that any development opportunities are properly approved and that any health and safety concerns are thoroughly addressed before seeking final approval on a new opportunity. We would provide all necessary information and attend town hall meetings to hear/address any concerns raised by the community. We are open to any suggestions by the City to improve this process over time and further establish a positive relationship between the City, the local community and Diamond.

Diamond requires that all wireless carriers secure their permits and approvals. Diamond would verify that local, state and federal permits and approvals have been obtained.

**Wireless Infrastructure Deployment:** Diamond can supervise on-site construction and installation work. All construction and installation will be executed in accordance with agreed upon procedures between Diamond and the City. Installation work is reviewed, before its commencement, by our engineering and technical services departments. Diamond will incur all costs and fees associated with the construction and installation of the towers, including fees associated with procuring permits. Any new towers would be subject to City approval and a ground lease to be negotiated between Diamond and the City. Our typical ground lease would provide for a five (5) year initial term and nine (9) five year extensions at the option of Diamond. Over the years, Diamond's determination to maximize the revenue generating potential of every site has fostered creativity in our site design and layout in order to accommodate the installation of the maximum number of installations without compromising the technical or aesthetic integrity of the site. As required, Diamond would reserve space on its infrastructure for the use of the City/related authorities.

- **Administration/Accounting:** Diamond would typically provide all billing and collection functions for all wireless carriers and other interested parties that collocate on the properties' existing structure or Diamond towers built on the properties after the execution of a definitive agreement with the City engaging Diamond as its site manager. In addition, Diamond will perform collection efforts for all arrearage monies owed to the City from existing wireless carriers (if any) installed on the properties prior

to our engagement as site manager. Diamond's legal team will prepare, negotiate and execute lease agreements as part of a process/workflow plan agreed upon with the City.

Diamond will provide and maintain detailed accounting of all existing rents from wireless carriers and new rents collected by Diamond and will remit all fees due to the City on a monthly basis per the parameters to be established between the parties. Diamond uses a state-of-the-art site management database that contains all of the key site information that is used by every other functional area within Diamond. Information such as the site address, coordinates, structure height, photographs, engineering drawings and access information is immediately available to all appropriate individuals. The database also contains all of the wireless carrier information for each site, such as, execution, renewals and terminations dates, rental amounts, escalations, electrical payments, equipment, etc.

Additionally, the history of all financial events is stored on Diamond's database allowing for a 100% audit trail of all site activity from day one.

### **3. Resumés:**

- **Ed Farscht – Chief Executive Officer**

Ed founded Diamond with Och Ziff Capital Management in 2006 and was a senior executive at AAT Communications, Bear Stearns, CIBC World Markets, and Citibank where he was involved in both investment banking and principal investments. Ed has been involved with the wireless tower industry since 1996 and with the wireless services industry since 1986. Ed can be contacted at 973-544-6809 or [efarscht@diamondcomm.com](mailto:efarscht@diamondcomm.com).

- **Peter Woodbury – President, Site Management and Land Acquisition**

Peter joined Diamond in 2012 after a 20+ year career in banking and financial services. He was a Managing Director at Lloyds Banking Group, Credit Suisse and Donaldson Lufkin & Jenrette with a focus on private equity, securitizations and various types of structured transactions. Since joining Diamond, Peter has led the expansion of the site management portfolio and actively acquires ground leases under existing tower infrastructure. Peter can be contacted at 973-544-6822 or [pwoodbury@diamondcomm.com](mailto:pwoodbury@diamondcomm.com).

- **Orazio Russo – Senior Vice President, Sales and Operations**

Orazio joined the Diamond team in April of 2007, bringing nearly 20 years of operational, sales and business development experience in the wireless communication and tower industries. Before joining Diamond, he served in several leadership positions and was responsible for generating new tower development and acquisition opportunities at SBA Communications and AAT Communications. Orazio can be contacted at 973-544-6817 or [orusso@diamondcomm.com](mailto:orusso@diamondcomm.com).



- **Randy Kilgore – Business Development Manager, Southeast**  
 Randy joined Diamond Communications in October 2015 and is leading Business Development opportunities in the Southeast Region. Prior to joining Diamond, Randy was an Area Manager with AT&T Mobility in Atlanta managing Real Estate and Site Acquisition for multiple markets across the Southeast. Prior to this, he also managed AT&T's new site build program for the Georgia market for several years. Randy has over 15 years of experience in the wireless arena working in both wireless carrier and site development vendor roles. Randy is part of the southeast regional team in Atlanta and can be contacted at 404-213-8129 or [rkilgore@diamondcomm.com](mailto:rkilgore@diamondcomm.com).
- **Karey Vawter – Manager, Land Acquisition and Construction, Southeast**  
 Prior to joining Diamond Communications in July of 2007, Karey held the positions of Director of Operations & Construction for Southeast Towers, and TCD Services LLC, and Director of Operations for TowerComm. Within Diamond, Karey oversees Landowner, Vendor and Client relations, vendor management and negotiations, turnkey strategic site development and maintenance, including FCC/FAA regulations and management of the lighting NOC. Karey is part of the southeast regional team in Atlanta and can be contacted at 404-909-8705 or [kvawter@diamondcomm.com](mailto:kvawter@diamondcomm.com).
- **Daniel Turnpaugh – Vice President, Small Cell and Business Development**  
 Daniel joined Diamond in October 2014, bringing over 14 years of experience in the wireless telecommunications industry. He began his wireless career in 2001 with Lattice Communications. He then founded DukeNet Communications, a wholly-owned Duke Energy Corporation tower company that developed new wireless towers and wireless attachments to transmission towers on Duke Energy-controlled assets, and later served four years as Vice President – Utility Development for Global Tower Partners. Daniel now oversees Diamond's efforts to utilize preexisting infrastructure for deployment of carriers' small cells and DAS. Daniel can be contacted at 973-735-6622 or [dturnpaugh@diamondcomm.com](mailto:dturnpaugh@diamondcomm.com).
- **Jess Leitzke – Senior Vice President, Tower Operations**  
 Before joining Diamond Communications in October 2006, Jess held several key operational positions at some of the larger tower companies and wireless carriers in the nation including AAT Communications, SBA Communications and PCS PrimeCo. Jess has years of hands-on experience with telecommunications operations, acquisitions, project management and new tower development. Jess can be contacted at 434-617-8570 or [jleitzke@diamondcomm.com](mailto:jleitzke@diamondcomm.com).
- **Mike Brett – Chief Financial Officer**  
 Mike joined Diamond in March 2007 after nearly ten years as an investment banker at Bear Stearns. While at Bear Stearns, Mike was part of the Technology, Media and Telecom (TMT) Group and focused on Telecommunication clients within the wireless and the wireless infrastructure sectors. Mike was involved in all aspects of banking including M&A, equity and debt financings and structured transactions. Mike can be contacted at 973-544-6810 or [mbrett@diamondcomm.com](mailto:mbrett@diamondcomm.com).

- **Gene Grieco – General Counsel**

Prior to joining Diamond in 2007, Gene was counsel to IDT Corporation for nearly nine years and held several key positions within IDT and its subsidiaries including Senior Vice President and General Counsel to Winstar Communications, LLC, a national competitive local exchange carrier, and Executive Vice President and General Counsel to IDT Spectrum, Inc., holder of FCC spectrum licenses. He has been involved with the telecommunications industry since 1998 and the wireless industry since 2001. Gene can be contacted at 973-544-6811 or [ggrieco@diamondcomm.com](mailto:ggrieco@diamondcomm.com).

- **Sarah Schaaf – Director, Regulatory Compliance**

Sarah has been employed in the wireless telecommunications industry since 1998. She manages negotiation and drafting of ground leases, tenant leases and related documentation. Sarah has experience handling each stage of title process-coordination. She has managed Regulatory Compliance related matters for 15 years, including environmental, NEPA, FAA/airspace, and FCC regulations; construction and implementation of company processes and procedures in accordance with federal, state and local rules and regulations. Sarah can be contacted at 262-649-4429 or [sberry@diamondcomm.com](mailto:sberry@diamondcomm.com).

- **Diana DiMare – Administration**

Diana is head of the Lease Administration and Tower Information Group at Diamond. She works with internal and external customers on a daily basis ensuring all requests are handled efficiently and expertly. Diana joined Diamond in March 2007 with over 15 years of experience in the financial services industry, with a focus on budgeting and operations. Diana can be contacted at 973-544-6813 or [ddimare@diamondcomm.com](mailto:ddimare@diamondcomm.com).

#### **4. Firm's Capabilities:**

- **Diamond Communications LLC**

Diamond is a leading owner and developer of wireless infrastructure specializing in management services, new tower development, site acquisition and marketing. Founded in 2006 by leading industry executives and headquartered in Short Hills, New Jersey, Diamond employs approximately 40 professionals and operates seven regional offices throughout the country. Diamond and its senior executives have managed more than 200,000 properties throughout the U.S. for utilities, state authorities, individuals, commercial enterprises, real estate investment trusts, municipalities and railroads.

Diamond's core management team averages 10 to 20 years of wireless communications tower site development and site management experience. We have a proven track record of consistently increasing cash flow on both managed and owned sites. We have on-staff lawyers, accountants, engineers, sales/marketing professionals and business executives all devoted to wireless communications tower development and site management. Our flat management structure and 'hands-on' approach ensures ongoing senior management focus. We will work with the City to develop and implement an approach that is developed specifically for its objectives.

Diamond has longstanding and well-established relationships with all of the major U.S. wireless carriers, including AT&T, Verizon, Sprint and T-Mobile. Some of our employees have previously worked for Verizon, AT&T and T-Mobile and understand the particular concerns and objectives of each of the major wireless carriers in network expansion and site development. We have pre-approved tenant agreements with all 4 of the major carriers, which not only reduce processing time for carrier installation, but make Diamond a trusted and efficient company for the carriers.

Additionally, Diamond is a leading purchaser and manager of ground leases under wireless communications towers and rooftop wireless antenna leases throughout the United States. We provide lease owners with immediate significant cash payouts or flexible payouts over time in exchange for the rights under their lease agreements. These payouts accelerate revenue and could allow the City to invest in capital, pay down existing debts or fulfill other funding requirements quickly.

- **Wireless Infrastructure Experience and Expertise**

Through our portfolio of owned, managed and leased sites, Diamond has developed into one of the largest privately-held tower companies in the United States. Diamond manages 200,000 tenanted and/or collocatable structures and has a robust pipeline of new tower development. The communication sites are a combination of towers, buildings or other structures that may be owned, managed or leased.

Diamond has in-house lawyers, engineers and business people all specialized in wireless infrastructure development. As an active marketer and developer of telecommunications services, our employees are deeply attune to the carrier market, with up-to-date knowledge of pricing, technology and expansion priorities of the major wireless carriers.

Diamond and its professionals have had historical success executing site management programs with various entities including state authorities, utilities, railroads and private land owners. Our managed portfolio is a combination of existing infrastructure and undeveloped land sites. Additionally, Diamond is currently in discussions to manage more than 3,000 miles of rights-of-way for a railroad.

- **Select Clients:**

- **Ohio Turnpike and Infrastructure Commission**

In January 2015, Diamond entered into a relationship with the Ohio Turnpike to perform consultation and site management services for its 34 communications towers across the entire Ohio Turnpike corridor, which spans 241 miles and includes 31 interchanges, 14 service plazas, 8 maintenance buildings, 1 administrative building and 1 technology facility.

Diamond's services to the Ohio Turnpike include analyzing their existing leases and making recommendations on new revenue opportunities, marketing the Ohio Turnpike's properties and existing infrastructure to the wireless carriers and negotiating and renegotiating new and existing leases. Additionally, Diamond will be executing the recommendations that were made for the Ohio Turnpike through our consulting services. Diamond is working to optimize Ohio Turnpike's cell tower program by leveraging our industry know-how and relationships with all four (4) major carriers and other users of wireless infrastructure. Diamond was awarded a partnership with the Ohio Turnpike through a similar RFP process.

- **FirstEnergy Corp.**

In August 2009, Diamond entered into a relationship with First Energy to manage the wireless attachment activities on all First Energy utility and communication structures throughout their networks in Pennsylvania, Maryland, New Jersey, Ohio, Virginia and West Virginia. FirstEnergy is a diversified energy company headquartered in Akron, Ohio. Its ten electric utility operating companies comprise one of the nation's largest investor-owned electric system, serving more than six million customers. Stretching from the Ohio-Indiana border to the New Jersey Shore, the companies operate a vast infrastructure that includes more than 194,000 miles of distribution lines, 120,000 transmission towers, 20,000 miles of rights-of-way, 5,000 properties and 170 communications towers. In addition to its wireless attachment management arrangement, Diamond has the right to construct and own new towers on First Energy properties. The partnership has given Diamond a diverse development experience from installing wireless antennas centers on transmission towers, to building new towers on substations. We have significantly increased revenues from wireless collocation. Diamond has worked with local municipalities, on First Energy's behalf, to create and execute plans on First Energy properties that are a best-fit for the communications needs of the community.

- **OUTFRONT Media**

In July 2015, Diamond entered into a relationship with OUTFRONT to increase the number of wireless collocations on OUTFRONT's nationwide billboard infrastructure. Previously known as CBS Outdoor, OUTFRONT has a growing portfolio of over 25,000 billboards concentrated in metropolitan areas and along major highways in 37 states. Diamond is working with OUTFRONT to provide macro site and small cell solutions for the densely populated area where OUTFRONT's billboards are located.

- **InSite MediaCom**

In February 2015, Diamond entered into a relationship with InSite MediaCom ("InSite") to serve as the exclusive marketing and manager of wireless collocations on InSite's billboards. Operating in seven states, InSite is a regional out-of-home advertising company with the majority of its 600+ sites located in the southeast. Diamond is working with all the major carriers and interested parties to market InSite's assets and to improve wireless coverage gaps within the region.

## **5. Current Workload**

This project will be primarily staffed by Peter Woodbury, President, Site Management and Land Acquisition, Orazio Russo, Senior VP of Sales & Operations, Randy Kilgore, Business Development Manager, Southeast and Karey Vawter, Manager, Land Acquisition and Construction, Southeast. Other company resources (legal, engineering, administration, etc.) will be available to actively participate in all relevant aspects of each of the phases as need. Diamond has sufficient resources and staffing to ensure the successful completion of Phases I and II of this RFP.

## **6. Public Sector Clients**

Contact details for the Ohio Turnpike and First Energy will be available upon request.

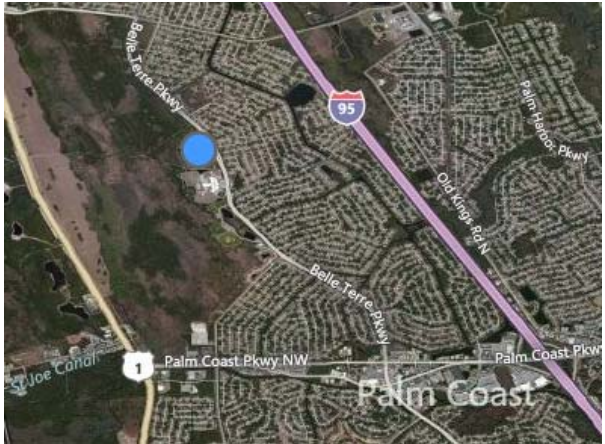

## **7. Price Proposal**

Diamond has a comprehensive approach to consulting that has historically served to maximize revenue opportunities for our clients. We identify opportunities, prepare marketing plans, consider design alternatives, execute approved site proposals and carry them through to revenue generation. Diamond will not charge for any of the services provided in Phase I of the RFP. Diamond will incur all costs and fees associated with implementing the RFP, this includes but it not limited to construction and installation of the towers and fees associated with procuring permits. Rather, we would be compensated through a revenue sharing arrangement with the City, which will compensate Diamond for success at increasing the City's revenue stream.

In exchange for an exclusive arrangement to provide the comprehensive services described in Phases I and II of this RFP, Diamond proposes entering into a revenue sharing arrangement with the City. Diamond's entitlement to compensation would be conditional on the creation of additional revenue streams. We propose the following revenue sharing:

- Site Development Fee: A fee of \$25,000 will be paid by Diamond to the City upon the commencement of construction for each new tower built by Diamond.
- 65% of the revenue received by new tenants which collocate on the city's existing structures will be paid to the City; 35% of revenue generated by new tenants which collocate on the City's existing structures will be paid to Diamond.
- 40% of the revenue generated from the new towers constructed and owned by Diamond on land owned or controlled by the City will be paid to the City; 60% of revenue generated from new towers constructed and owned by Diamond on land owned or controlled by the City will be paid to Diamond.
- 75% of any increase in revenue from the City's existing tenants and from any amendments, extensions, escalations, etc. after the effective date of the definitive agreement will be paid to the City; 25% of any increase in revenue from the City's existing tenants from any amendments, extensions, escalations, etc. after the effective date of a definitive agreement will be paid to Diamond.


# Appendix A: Site Analyses

1) Site Name: Belle Terre Elementary School					
Aerial View			Parcel View		
					
Coordinates			Address		
29.583372, -81.258382			5545 Belle Terre Pkwy Palm Coast, FL 32137		
Traffic Analysis within 1 Mile of Site			Population Analysis within 1 Mile of Site		
Highway Name	Distance from Site	Count per Day	Population	Business Count	
I-95	1 mi.	43,000	146	61	
Carrier Coverage					
Verizon		AT&T		Sprint	T-Mobile
Strong-Medium		Medium		Weak	High
Competition					
Tower Owner	Distance from Site	Type	Height	Carriers	Coordinates
Crown Castle	0.92 mi.	Flagpole	150 ft.	T-Mobile	29.57075, -81.253342
Development Potential Summary					
Belle Terre Elementary School is a good candidate for wireless development due to coverage demands from AT&T and Sprint and a high traffic count.					

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## 2) Site Name: A1A Water Tank

2) Site Name: A1A Water Tank					
Aerial Picture			Parcel Outline		
					
Tower Owner		Tower Height		Carriers	Coordinates
COPC		-		Sprint, T-Mobile & Verizon	29.607816, -81.200603
Traffic Analysis within 1 Mile of Site			Population Analysis within 1 Mile of Site		
Highway Name	Distance from Site	Count per Day	Population	Business Count	
A1A	0.5 mi.	5,100	1,723	124	
Carrier Coverage					
Verizon		AT&T		Sprint	T-Mobile
Strong		Medium		Strong	Strong
Competition					
Tower Owner	Distance from Site	Type	Height	Carriers	Coordinates
American Tower Company	2.74 miles	Guyed	330 ft.	Verizon, AT&T, Sprint, T-Mobile	29.602478, -81.245692
Tower Summary					
The tower is has sufficient room to attract an AT&T collocation.					

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## Appendix B: Timeline



ID	Task Name	Duration	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18
1	Information Consolidation/Existing Lease Review	Months 1-3	Blue	Blue	Blue															
2	Site Visits and Inventory	Months 2-3		Grey	Grey															
3	The Report: Develop Tower Plan for Approval	Months 3-5			Blue	Blue	Blue													
4	Initiate Contact With Carriers	Month 6						Grey												
5	Execution of Marketing Plan	Months 6-9						Blue	Blue	Blue	Blue									
6	Lease Negotiation with Carriers	Months 7-10							Grey	Grey	Grey	Grey								
7	Zoning/Permitting	Months 8-15								Blue	Blue	Blue	Blue	Blue	Blue	Blue	Blue			
8	Construction	Months 15-17															Grey	Grey	Grey	
9	Installation	Month 18																		Blue

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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	<b>COPC</b>	COPC	1 Sprint 2 T-Mobile 3 Verizon
Ralph Carter Park	1385 Rymfire Drive	<b>COPC</b>	COPC	1 MetroPCS
Utility Drive	22 Utility Drive	<b>COPC</b>	COPC	1 HEECSA
Palm Coast Tennis Center	1290 Belle Terre Pkwy	<b>COPC</b>	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.