



# City of Palm Coast

## Agenda

### CITY COUNCIL BUSINESS

City Hall  
160 Lake Avenue  
Palm Coast, FL 32164  
www.palmcoastgov.com

**Mayor Milissa Holland**  
**Vice Mayor Robert G. Cuff**  
**Council Member Steven Nobile**  
**Council Member Nick Klufas**  
**Council Member Heidi Shipley**

---

**Tuesday, February 6, 2018**

**6:00 PM**

**CITY HALL**

---

#### **City Staff**

**Jim Landon, City Manager**

**William Reischmann, City Attorney**

**Virginia A. Smith, City Clerk**

- > Public Participation shall be in accordance with Section 286.0114 Florida Statutes.
- > Other matters of concern may be discussed as determined by City Council.
- > If you wish to obtain more information regarding the City Council's agenda, please contact the City Clerk's Office at 386-986-3713.
- > In accordance with the Americans with Disabilities Act, persons needing assistance to participate in any of these proceedings should contact the City Clerk at 386-986-3713, at least 48 hours prior to the meeting.
- > City Council Meetings are televised on Charter Spectrum Networks Channel 495 and on AT&T U-verse Channel 99.
- > All pagers and cell phones are to remain OFF while City Council is in session.

#### **A. CALL TO ORDER**

#### **B. PLEDGE OF ALLEGIANCE TO THE FLAG**

#### **C. ROLL CALL**

#### **D. PUBLIC PARTICIPATION**

Public Participation shall be held in accordance with Section 286.0114 Florida Statutes. After the Mayor calls for public participation each member of the audience interested in speaking on any topic or proposition not on the agenda or which was discussed or agendaed at the previous City Council Workshop, shall come to the podium and state their name. Each speaker will have up to three (3) minutes each to speak. The Mayor will advise when the three (3) minutes are up and the speaker will be asked to take a seat and wait until all public comments are finished to hear answers to all questions. Once all members of the audience have spoken, the Mayor will close public participation and no other questions/comments shall be heard. Council and staff will then respond to questions posed by members of the audience. Should you wish to provide Council with any material, all items shall be given to the City Clerk and made part of the record. If anyone is interested in discussing an issue

further or ask additional questions, individual Council Members and staff will be available after the meeting to discuss the matter and answer questions.

**E. MINUTES**

- 1. MINUTES OF CITY COUNCIL  
JANUARY 16, 2018 BUSINESS MEETING  
JANUARY 20, 2018 SPECIAL**

**F. PRESENTATIONS**

- 2. PRESENTATION ON THE THIRD ANNUAL HEALTH AND SAFETY EMPLOYEE CALENDAR**
- 3. PRESENTATION BY THE ROTARY CLUB OF FLAGLER COUNTY RECOGNIZING THE PALM COAST VOLUNTEER FIREFIGHTERS FOR THEIR SUPPORT AND ASSISTANCE WITH FANTASY LIGHTS**

**G. ORDINANCES SECOND READ**

- 4. ORDINANCE 2018-XX TO REZONE 40 COLECHESTER LANE FROM MFR-1 TO SFR-1**
- 5. ORDINANCE 2018-XX REPEALING CHAPTER 54 WIRELESS COMMUNICATIONS AND AMENDING CHAPTER 4 OF THE UNIFIED LAND DEVELOPMENT CODE**
- 6. ORDINANCE 2018-XX AMENDING CHAPTER 42 ARTICLE IV COMMUNICATION RIGHTS-OF-WAY**

**H. RESOLUTIONS**

- 7. RESOLUTION 2018-XX PARKS AND RECREATION FEE STRUCTURE**

**I. CONSENT**

- 8. RESOLUTION 2018-XX APPROVING A CONTRACT WITH MAGELLAN ADVISORS FOR MUNICIPAL BROADBAND NETWORK BUSINESS PLAN**
- 9. RESOLUTION 2018-XX APPROVING RELEASE OF REQUEST FOR SOLUTIONS FOR EXECUTIVE SEARCH FIRM**
- 10. RESOLUTION 2018-XX APPROVING A COMMUNICATIONS SITE LEASE AGREEMENT BETWEEN THE CITY OF PALM COAST AND DIAMOND TOWERS V LLC FOR CITY PROPERTY LOCATED AT 4 CORPORATE DRIVE FOR CONSTRUCTION OF A TELECOMMUNICATIONS TOWER.**

11. RESOLUTION 2018-XX APPROVING A CONTRACT WITH HALIFAX PAVING, INC., FOR INTERSECTION IMPROVEMENTS TO BELLE TERRE BLVD AT SR 100 AND US 1 AT WELLFIELD GRADE (PUBLIC WORKS)
12. RESOLUTION 2018-XX APPROVING A CONTRACT WITH INTEGRITY MUNICIPAL SYSTEMS, LLC FOR THE REPLACEMENT OF THE LIME SLAKING SYSTEM AT WATER TREATMENT PLANT #1
13. RESOLUTION 2018-XX APPROVING A CONTRACT WITH PRO LIME CORPORATION FOR LIME SLUDGE REMOVAL, HAULING AND DISPOSAL
14. RESOLUTION 2018 XX APPROVING MASTER SERVICES AGREEMENTS WITH MULTIPLE FIRMS FOR ARCHITECTURAL SERVICES ON AN AS-NEEDED BASIS
15. RESOLUTION 2018-XX APPROVING PIGGYBACKING THE LEE COUNTY CONTRACT WITH MILLER PIPELINE, INC. FOR MATERIALS AND INSTALLATION OF GRAVITY SEWER MAIN LINERS.
16. RESOLUTION 2018-XX APPROVING PIGGYBACKING ST. JOHNS COUNTY CONTRACT WITH CHEMTRADE INC. FOR THE PURCHASE OF LIQUID ALUMINUM SULFATE
17. RESOLUTION 2018-XX APPROVING PIGGYBACKING THE US COMMUNITIES CONTRACT WITH CINTAS CORORATION TO PURCHASE UNIFORM RENTAL SERVICES AND FIRE PROTECTION SERVICES
18. RESOLUTION 2018-XX APPROVING PIGGYBACKING A GOVERNMENT SERVICES CONTRACT WITH MEDORA CORPORATION TO PURCHASE SOLARBEE UNITS FOR CIGAR LAKE WATER QUALITY IMPROVEMENTS.

**J. PUBLIC PARTICIPATION**

Remainder of Public Comments is limited to three (3) minutes each.

**K. DISCUSSION BY CITY COUNCIL OF MATTERS NOT ON THE AGENDA**

**L. DISCUSSION BY CITY ATTORNEY OF MATTERS NOT ON THE AGENDA**

**M. DISCUSSION BY CITY MANAGER OF MATTERS NOT ON THE AGENDA**

**N. ADJOURNMENT**

**19. CALENDAR**

# City of Palm Coast, Florida Agenda Item

Agenda Date : 02/06/2018

<b>Department</b>	CITY CLERK	<b>Amount</b>
<b>Item Key</b>		<b>Account</b>
		<b>#</b>
<b>Subject</b>	MINUTES OF CITY COUNCIL JANUARY 16, 2018 BUSINESS MEETING JANUARY 20, 2018 SPECIAL	
<b>Background :</b>		
<b>Recommended Action :</b>		



**City of Palm Coast  
Minutes  
CITY COUNCIL  
BUSINESS MEETING**

City Hall  
160 Lake Avenue  
Palm Coast, FL 32164  
www.palmcoastgov.com

**Mayor Milissa Holland  
Vice Mayor Robert G. Cuff  
Council Member Steven Nobile  
Council Member Nick Klufas  
Council Member Heidi Shipley**

---

**Tuesday, January 16, 2018**

**9:00 AM**

**CITY HALL**

---

**City Staff**

**Jim Landon, City Manager**

**William Reischmann, City Attorney**

**Virginia A. Smith, City Clerk**

- > Public Participation shall be in accordance with Section 286.0114 Florida Statutes.
- > Other matters of concern may be discussed as determined by City Council.
- > If you wish to obtain more information regarding the City Council's agenda, please contact the City Clerk's Office at 386-986-3713.
- > In accordance with the Americans with Disabilities Act, persons needing assistance to participate in any of these proceedings should contact the City Clerk at 386-986-3713, at least 48 hours prior to the meeting.
- > City Council Meetings are televised on Charter Spectrum Networks Channel 495 and on AT&T U-verse Channel 99.
- > All pagers and cell phones are to remain OFF while City Council is in session.

**A. CALL TO ORDER**

*Mayor Holland called the meeting to order at 9:00 a.m.*

**B. PLEDGE OF ALLEGIANCE TO THE FLAG**

*Mayor Holland led the pledge to the flag.*

**C. ROLL CALL**

*Virginia Smith, City Clerk called the roll. CM Nobile was excused.*

**D. PUBLIC PARTICIPATION**

Public Participation shall be held in accordance with Section 286.0114 Florida Statutes. After the Mayor calls for public participation each member of the audience interested in speaking on any topic or proposition not on the agenda or which was discussed or agendaed at the previous City Council Workshop, shall come to the podium and state their name. Each speaker will have up to three (3) minutes each to speak. The Mayor will advise when the three (3) minutes are up and the speaker will be asked to take a seat and wait until all public comments are finished to hear answers to all questions. Once all members of the audience

have spoken, the Mayor will close public participation and no other questions/comments shall be heard. Council and staff will then respond to questions posed by members of the audience. Should you wish to provide Council with any material, all items shall be given to the City Clerk and made part of the record. If anyone is interested in discussing an issue further or ask additional questions, individual Council Members and staff will be available after the meeting to discuss the matter and answer questions.

*Steve Carr- Health Issues from traffic fumes, noise and dust are known. False impression are if the vehicles are moving that the fumes and dust are not making it into homes. How many of you would be willing to jog behind the heavy traffic on Floirda Park Drive and say the fumes and the dust are not harming my health. I would ask if this year, for the City to do something to prevent Florida Park Drive from being a thorough fare for exchange traffice between the two parkways, Palm Coast Parkway and Palm Harbor.*

*George Mayo- I wanted to remind the citizens that there is a meeting this Thursday night at 5:30 p.m. at the Community Baptist Church on Old Dixie Hwy. concerning the Florida DOT putting a round about at the intersection of Old Dixie and US 1. It seems that in past meetings I have attended that the County Commission would be more interested in putting in a traffic light as opposed to a round about but the topic will be discussed at that meeting.*

## **E. MINUTES**

### **1. MINUTES OF THE CITY COUNCIL DECEMBER 19, 2017 BUSINESS MEETING JANUARY 16, 2018 WORKSHOP**

**Pass**

**Motion made to approve made by Council Member Shipley and seconded by Vice Mayor Cuff**

**Approved - 4 - Vice Mayor Robert Cuff, Council Member Nick Klufas, Council Member Heidi Shipley, Mayor Milissa Holland**

## **F. PRESENTATIONS**

### **2. PRESENTATION OF THE PINK ARMY 5K PROCEEDS DONATION TO THE FLORIDA HOSPITAL-FLAGLER FOUNDATION CANCER FUND**

*John Subers provided Council with the overview of the Pink Army 5K race and the check amount for the Florida Hospital Flagler Foundation Cancer Fund.*

*Mayor Holland presented two framed photos to the cheerleading squad coach.*

**3. PRESENTATION-FLAGLER SCHOOLS AND FLAGLER CARES ON MENTAL HEALTH AWARENESS**

*Representatives from Flagler Schools and Flagler Cares presented Council with a PowerPoint presentation, which is attached to these minutes. They offered training to all employees.*

**G. RESOLUTIONS AND ORDINANCES**

**4. RESOLUTION 2018-XX APPROVING A CITY-WIDE WIRELESS MASTER PLAN**

**R2018-5**

*Mr. Landon provided a brief overview to this item and items 5 and 6. Representatives from Diamond Communications provided a PowerPoint presentation on items 4,5, and 6, which is attached to these minutes.*

*Mayor Holland- Historically have you engaged with the carriers to determine if that has been a challenge for them? Where did this conversation stem from; of Palm Coast being behind as far as the coverage are there barriers? Obviously this takes care of the barriers and addresses the barriers that you feel have slowed the process down a bit when it comes to those relationship. Do you feel confident sitting here today that this stragegy and approach will have them lining up or what is your assessment? Have you historically contacted the providers? Are you confident this approach will have providers lining up? Ans: Mr. Murphy-Lining up imaybe a strong word. The carriers, from the discussions, are interested in knowing more about the details of what would come out of the wireless masterplan and the changes. How quickly a carrier may respond, indicating interest on a certain property, that remains to be seen.*

*Mayor Holland-I know we have a government affairs director from AT&T in the room. Have we reached out to other carriers to vet this? Ans: Mr. Landon-Just through Randy and his conversations with them of letting them know that we are in this process. We also, T-Mobile has been in town and we have talked to them because they have just recently added an antenae and talking about another one possibly. If I could add to that, the word we get is it is difficult to expand service here in Palm Coast because of our ordinance, perception, who knows exactly. The word we get from the carriers is that it is difficult to put up antenae in Palm Coast. As soon as you get that reputation -- we may go elsewhere where it is easier because every community out there would like more coverage. I think what we are trying to do here is to make it easier but also with the marketing and keeping in touch with them, trying to change that image. Yes, we are ready to build towers where they need to be or we have towers they can add to.*

*Mayor Holland-Are we looking at future developments and projects and creating coverage in those areas that are not developed yet? Ans: Mr. Landon-This masterplan is approximately 5 years out. If we are talking about west of US 1, really it is all a big blank canvas at this time. As we develop City properties and potential sites -- that is the time to look at it. There is no telling where a good site is just thousands of acres of free land. This is not going to be a stagnant process.*

*We have to stay flexible; that is why we have so many sites we are proposing because we want to be flexible enough with the carriers because they are the ones that ultimately make that decision and we can provide them with data and Diamond Head has done the research but they are still going to do their due diligence too. I think having flexibility is important and I think we have done that. In the future, we are going to have to evaluate new sites as we continue to grow.*

*CM Klufas- I am curious about the terms of the lease agreements we will be going forward with as we approach carriers. I know today our lease agreements are approximately 30,000 per year per carrier for the City owned antennaes. I know adjustments are going to be made to that for the Wirelss Masterplan but I did not see any proposals for any monetary amounts going forward. Part II of my question is how aggressively are we going to market our exiting infrastructure, giving financial incentives or being as creative as we want to be to expedite the process of getting carriers onto our existing infrastructure because if we are going to be building new poles, we are still look for about a year before implementation actually occurs. Could you shed some light on that. Ans: Mr. Murphy-The existing sites and towers have been marketed to the carriers. I know that some carriers are probably more present than others at this point. There are alot of things that go into what dictates a carrier going on a specific property. There are a lot of flag poles in Palm Coast. With the tower mounted radios that Dan had mentioned earlier, attractiveness of flag poles, particularly the older smaller ones, generally the carriers don't get the bank for their buck on sites like that. Ida can talk about Plan B. Yes, the existing sites are being marketed. Ans: Mr. Landon-If this is approved, we will be able to offer up to them if their antennaes outside of those flag poles based on conversations at the Workshop with the idea of hopefully . . .if the structure can handle it, that is the engineering side of it; there are other sites available, some are not City owned. We will continue to market. We have a new one recently on County Property on Colbert Lane has one antenae that has not been activated.*

*CM Klufas: It has been activated. Ans: Mr. Landon - It was? Recently?*

*CM Klufas:: For Verizon. Ans: Mr. Landon - It has a couple, two or three more opportunities. We will continue to market those too. Not just our sites. Every tower out there. Right next door at FPC. T-Mobile went on that. Any time we can get antennaes on existing sites, that is better than building a new pole. About your question on lease terms, that is the next step as far as how much the carriers - what the market will bear at this point. Diamond will be very much part of those negotiations. Our agreement with Diamond, this whole process, we pay nothing up front and that it is . . . they receive a portion of . . . if it is a tower, they build the tower and they receive more. The total cost of the infrastructure is Diamond. We have a lease on our property. If it is an existing, I believe we receive 60% and if it is a new tower, I beleve it is 40%. I am not sure if those numbers are exactly correct. Exactly what the market is, Mr. Klufas, to be honest with you, I suggested to them, the first three years could be free as far as we are concerned we are just trying to provide the incentive and then after that we would go market rate. I don't know if that is practical or if that is what Diamond is thinking exactly. But those are the kind of things . . . right now, we are just trying to encourage them to come.*

*CM Klufas: That is encouraging. That is exactly what I wanted to suggest even if we have to some how supplement those critical infrastructure improvements are*



going to be a little far out of our building towers but to get it more quickly. I wasn't sure how the rest of you (the Council) felt about being as creative as possible with the terms for adding equipment to our existing structures. Ans: Mr. Landon - I think that incentive vs. a new tower makes a lot of sense. That is what we have been talking about.

*Public Comments:*

*George Mayo- I think this is one of those things where people are going to have to realize that are always complaining that I don't have service; I can't find service. I know when my wife and I drive around the city from one place to another. I am driving around the City and she is trying to call; I don't have service or I only have one bar to call. We are flat here and to have such poor service amazes me. I don't know, I am not tech guy but I still wonder how could we have such poor service here? One of the illustrations the gentlemen showed, they found the site but the City deemed it was too close to the houses. I think what the City is going to have to realize come to a certain point in some places, it is going to be . . . do you want better service and to look at a pole in the distance or you are not going to have a pole here and not have great service. Will the equipment handle 5G or if 5G comes in, do they not come and say, we have to do something different; we have to add equipment to what we already did and it will cost more money. Or will it be compatible with the 5G?*

*Steve Carr-I have a signal booster in my house for my cell phone . I don't know what technology is doing as far as these towers and everything is going? I want to know if the tower will boost our signal capability.*

*Stephanie Capehart- I feel their relationship with Diamond is unnecessary because we have dedicated account representatives from each of the carriers that can work with our government. Their whole purpose is to work with City municipalities government agencies at the city/county level. I feel like we are getting into a long-term relationship here that is not necessary. We are going to end up pay 20% to Diamond Communications for a long-term plan, five years. In five years, the technology is going to be different. From my point of view, working directly with the carriers is a much better solution.*

*Louis McCarthy-The theory from working with the carriers may or may not be true. They don't put up the towers. They will put stuff on the towers if it is in their interest. The same thing of working with the City. They may or may not want to work with the City and if they do work with the City, their hands will be deeper in our pockets than Diamond ever would be. I think we need someone who knows exactly how the system works and project outward years ahead of things to put in and everything. I live in Pine Grove and right now, I don't have any bars; I have a line and have to walk from one room to the other to get anything. I can tell you right now: trust but verify.*

*Responses to Public Comments*

*5G-Ans: Dan Turncot-Yes, part of what the Wireless Masterplan is designed to do is to get the City ready for 5 G and to go from 3 to 5 is unsustainable. 5g, the exact architecture for what those networks are going to look like is a little bit of an open question and it may be different for each of the carriers but what we do know is that it will rely a little bit more on small cells than 3G did, a lot more than 3G did*

*and probably more than 4 g does. Really these towers are going to bridge the gap between 3G and 5G but there is going to be with those small cells. There will be some interplay between small cells that are set up for 5G and the towers that we are planning to build to provide coverage for 4G. They will work together and they are necessary to get ready for 5G. The gentleman is correct. There are a couple of the carriers that are working on 5G and trying to roll it out in trials, even this year. There are no handsets for 5G. It is still a ways off before we are going to have 5G handsets. We definitely need to get ready and make sure the coverage is there in the 4G environment so that we can get ready for 5G.*

*Booster-Ans: Mr. Landon-Inside buildings is always an issue. There are different ways of addressing that. WiFi calling is a solution for that. The ultimate goal is to add the capacity so you don't need either one of those. That is what we are trying to work on, the big picture. In the meantime, we are going to have to address their own individual needs on how much strength they have in a signal in their own home.*

*Diamond relationship-Ans: Mr. Landon- - First of all, that decision has already been made with diamond communications and that was a lengthy discussion last year. I will tell you, at that time, it took a long time before we negotiated. It was an issue that was something we looked at very hard. Since developing the relationship with diamond, I am more and more convinced that this really has to be a three legged stool. It takes the cooperation of the carrier to ultimately put up the antenaes and takes the city but we also, like you need an engineer to design a street, you have to have those experts to help us with FDOT. You have to have the technical people to work with the carriers. Yes, we have representatives, but the representatives from AT&T in the room: she will tell you that she does not have the technical background. It is a different relationship than working with our connections here with public relations, if you will, with the carriers working with the technical people. We have people that can talk their lingo; can provide the data. I think that is critical. One of the reasons we got stagnant. We had a relationship with a company of few years ago and that is when we started seeing a lot of growth. That relationship expired and then we started getting stagnant because we didn't have the third leg of the stool. Now that we have started working with Diamond, I am more and more convinced that is critical. They have connections we don't with the technical people. Yes we can provide connections more with the government affairs and public relations side of things.*

**Pass**

**Motion made to approve made by Council Member Klufas and seconded by Vice Mayor Cuff**

**Approved - 5 - Vice Mayor Robert Cuff, Council Member Nick Klufas, Council Member Steven Nobile, Council Member Heidi Shipley, Mayor Milissa Holland**

**5. ORDINANCE 2018-XX REPEALING CHAPTER 54 WIRELESS COMMUNICATIONS AND AMENDING CHAPTER 4 OF THE UNIFIED LAND DEVELOPMENT CODE**

*Attorney Reischmann read the title of the ordinance into the record. Mr. Landon provided a brief overview to this item. Ms. Ida Meehan presented a PowerPoint presentation, which is attached to these minutes.*

*CM Klufas-Did we look at Dig Once ordinance because cell phone towers with out any connectivity via fiber; there are a tool but they are not connected to anything esle. They are no good. If we were to build these towers, we still want to be capable of putting communication devices on them without an active connection and it is also important for fiber to be laid for 5G infrastructure to be placed into our community. A Dig Once Ordinance was something I brought up in our five year strategic planning,. I don't know if there were any opportunities to look at that because we can do all we want for marketing and working with our Government Affairs Director. You kind of took a jab at her. The Government Affairs Director, she translates the engineer talk to government talk so she did not have a chance to defend herself but being in technology, I took offense to that. The fiber that is so critical to the infrastructure actually existing if we have the opportunity to enforce a dig once policy, which many communities are doing, that will be something that might put us in a better position to provide a soup to nuts solution for these carriers to come into play. Did we look at?*

*Ans: Mr. Landon - What kind of ordinance?*

*CM Klufas: A dig once ordinance. If we are doing any type of road construction, where we don't have conduit or if there is conduit that is put in place so fiber can be pulled through? Ans: Mr. Landon - No. But it is a good idea. You are talking about bearing it underground right-of-way. That would be different from this but you are correct. What you are seeing out there right now for example a company that is putting fiber in because and actually they are working to connect all the Verizon's. That is going to be a separate project and I think that will be a worth while project and yes we talked about that. If I may say, maybe she wants to get up and defend herself but I started talking technical with her and she said, I'm not your person and we need to get the right people here. I actually was feeding off of what she said. I was not trying to insult. We need technical people and we need the administrative side of it.*

*Mayor Holland: As far as the dig once, are you saying this doesn't address? Ans: Mr. Landon - This does not address that at all. That has to do with . . . if you are going to dig, you have to provide conduit so a City can provide extend our fiber. Mayor Holland: How can we not do that? Ans: Mr. Landon - It is a different program, we really need to look into it.*

*Mayor Holland: I think though it is sort of the force main going up to Marine Land. You offer a comprehensive approach to an ordiance that requires them at the time of construction to lay a connection so when we are ready to tie in or drive our force main up to Marineland; it has the connectivity already. It is almost like getting off of septic. I do think the approach of sort of we are looking at this as more of a comprehensive approach than we have in the past and I think it is worth while bring back that language that would allow us to do that. Ans: Mr. Landon - Mr. Viscardi is reminding me that we are going to bring to you a proposal from a company that we will be looking at that. That was part of our fiber masterplan update. We are heading in that direction. We are planning to bring a proposal probably this month or next month.*

*Mayor Holland: If we are looking at our sites and to Council Member Klufas's point, the fiber is a part of that connection. If it is our sites and it gives us a greater advantage to insure these carriers are coming on board, why wouldn't we include that. It wouldn't take away from the ordinance. Ans: Mr. Landon- Once again, if you have . . . when we do a street project, we lay the conduit. What we are talking about is when a company comes in to do a permit to dig in our right of way, we are going to tell them, they will install conduit for us and that is a separate issue. Basically, you are telling a private company that they are going to provide us with this asset. Once again, I am not saying it is a bad idea that is a separate conversation.*

*Mayor Holland: We lay the conduit for the City? Ans: Mr. Landon - That is the whole idea of one dig, sure. We can lay separate conduit but that would be a separate dig than our dig. Their conduit right now would be a matter of giving us some conduit.*

*Mayor Holland: Coordinate with them if they are doing it. Say, we will lay the conduit at that the time you are constructing. So we are coordinating our efforts. Ans: Mr. Landon - Once again, it is more complicated than that. We are dealing with it right now. It is a separate conversation, you have to have different people in the room to have that conversation.*

*CM Klufas: One of the other interesting things about the fiber we are laying now, I know we had talked a little bit about it. But having some verbage in our ordinance to force co-location through the conduits that we can also lay our fiber through at the same time. We had talked about that . . . .Ans: Mr. Landon - Once again, that is coming your way.*

*CM Shipley-I am trying to understand the Dig Once Ordinance. What we are doing here now is that going to be duplicating it? We are doing something twice which will cost twice as much. Ans: CM Klufas-I brought the Dig Once Ordinance into play only because for a carrier to be able to get onto a tower, they need fiber laid. If there is an opportunity where we and what we are doing now. Will it cost us more? Ans: CM Klufas-I brought Dig Once into play because for a carrier to be able to get their equipment onto a tower, they need to have fiber laid in. If there is an opportunity where we have already been digging prospectives sites that have been identified, if we can get the infrastructure in place so they can say, ok it is going to cost us less to install equipment on this tower because we don't have to back all of our own fiber because the conduit is already there. We just have to pull through the existing conduit. It may be more of an incentive for them. Ans: Mr. Landon- What we have found is the big carriers want their own fiber and lots of times, they have a contract with somebody. If it gets cut and it is not maintained, they have one. Every tower needs to be connected with a wire. In this case, it will be glass. It is not just wireless. It also has the fiber that is running all over the country to connect all these together too. It is important to have an update to our whole fiber network in this community. It is nice to see people in town laying fiber because it will help. Mr. Klufas is making an excellent point. This is dealing with the towers. You will be seeing something very soon where we will be dealing with the rest of it.*

*Public Comments:*

*George Mayo- If the questions is to have Flush mount vs full array. If you are putting up these towers, it seems like the only perfect solution is to allow full array. Otherwise, it is like you are tying your hand around your back trying to do something.. If you do allow that, as the lady showed the picture of the antenna at Palm Coast High School, would you allow it to be retrofitted from the flush mount that it now is to the full array? This way, according to them, you will expand the coverage without putting up a new pole. If there are no existing poles out there and I am sure there are that are flush mount, retrofit them also.*

*Stephanie Capehart I know it seems like have a lot to say here and seem to know alot but I have friends that are in the industry. We are talking about building towers. Towers are a thing of the past. The carriers now have options to put some type of device (a booster or small cell) on existing light poles, flag poles, electricity poles. I would like someone to clarify that opportunity and compare it to building new towers., the carriers have options to put some type of a device to put on existing light poles, flag poles, electricity poles. Please clarify that opportunity vs building new towers.*

#### *Responses to public comments*

*We decided, as a Council, last time that we prefer the full array. As far as the retrofitting, the school district one is not. Ans: Mr. Landon- we have not jurisdiction over that and we are not involved in that one at all. I am not sure what the conversation was. It is what it is at this point. In fact, we are still working tweaking the ordinance. You may see a few minor changes between first read and second read to make clear that City Council is saying full array is ok. George is correct in the fact that better coverage with one tower means fewer towers. There is that benefit as well. We are moving forward with the full array to make sure the ordinance makes it clear.*

*Mayor Holland: Is there the ability to retrofit any? Ans: Mr. Landon- Absolutely. If we allow full array, the retrofit will be allowed too.*

*Mayor Holland: As far as Ms. Capehart's comments. It is my understanding that the carriers do not prefer flag poles do to the fact that it does not provide coverage. Ans: Mr. Landon: I think she is talking about the next ordinance. Let me try to . . . this is one of the things I learned in this process is coverage vs. capacity. The towers with the larger cells provide the coverage. The problem is you still have to have the capacity and the capacity comes when you have a lot of people who end up in one location. A sporting event. A good example here was during the hurricanes, people would say my coverage was poor. One of the reasons was we had I-95 at a standstill; guess what they are doing . . . they are on their phones. The capacity started going down. What the industry is headed toward are the small cells. That is the future and that is where they put smaller cells on existing light poles. They maybe able to put it on a mast arm of a traffic signal. The next ordinance we are going to talk about is going to allow those also. It is a combination of meeting the coverage so you do not have a gap. The small cells don't work well unless you have that good coverage and so we need both. That is why we are having another ordinance next to allow the small cells too. And Mr. Klufas' point is you also have to have the fiber.*

*Mayor Holland: And also allows us to recognize State legislation that passed last year that requires us to let them exist in the right of ways. It creates that uniformity*

*when we have different carriers coming in and they want different things but it allows us to have that uniformity in the ordinances that reflects that.*

**Pass**

**Motion made to Approved on first reading made by Vice Mayor Cuff and seconded by Mayor Holland**

**Approved - 4 - Vice Mayor Robert Cuff, Council Member Nick Klufas, Council Member Heidi Shipley, Mayor Milissa Holland**

**6. ORDINANCE 2018-XX AMENDING CHAPTER 42 ARTICLE IV COMMUNICATION RIGHTS-OF-WAY**

**Pass**

**Motion made to Approved on first reading made by Vice Mayor Cuff and seconded by Council Member Shipley**

**Approved - 4 - Vice Mayor Robert Cuff, Council Member Nick Klufas, Council Member Heidi Shipley, Mayor Milissa Holland**

*Attorney Reischmann read the title into the record. Mr. Landon provided a brief overview to this item. Ms. Ida Meehan presented a PowerPoint presentation, which is attached to these minutes.*

*Public Comments:*

*No comments were received.*

**7. ORDINANCE 2018-XX TO REZONE 40 COLECHESTER LANE FROM MFR-1 TO SFR-1**

*Attorney Reischmann read the title into the record. Reminded Council this is quasi-judicial. Mayor Holland called for any ex-parte communications. There were none.*

*Mr. Landon provided a brief overview to this item. Ms. Ida Meehan presented a PowerPoint presentation, which is attached to these minutes.*

*Public Comments*

*No comments were received.*

**Pass**

**Motion made to Approved on first reading made by Vice Mayor Cuff and seconded by Council Member Shipley**

**Approved - 4 - Vice Mayor Robert Cuff, Council Member Nick Klufas, Council Member Heidi Shipley, Mayor Milissa Holland**

**8. RESOLUTION 2018-XX UPDATE TO THE THIRD AMENDED AND RESTATED PALM COAST PARK DEVELOPMENT OF REGIONAL IMPACT DEVELOPMENT ORDER**

**R2018-7**

*Mr. Landon provided a brief overview to this item. Mr. Bill Hoover presented a PowerPoint presentation, which is attached to these minutes.*

*Public Comments:  
No comments were received.*

**Pass  
Motion made to approve made by Vice Mayor Cuff and seconded by Council Member Shipley**

**Approved - 4 - Vice Mayor Robert Cuff, Council Member Nick Klufas, Council Member Heidi Shipley, Mayor Milissa Holland**

**H. CONSENT**

**9. RESOLUTION 2018-XX APPROVING A ONE YEAR CONTRACT WITH AIRSIDE PAVEMENT, INC., TO PROVIDE VARIOUS STRIPING MAINTENANCE SERVICES ON AN AS-NEEDED BASIS.**

**R2018-4**

**Pass  
Motion made to Adopt on consent made by Vice Mayor Cuff and seconded by Council Member Shipley**

**Approved - 4 - Vice Mayor Robert Cuff, Council Member Nick Klufas, Council Member Heidi Shipley, Mayor Milissa Holland**

**10. RESOLUTION 2018-XX APPROVING A FLORIDA DEPARTMENT OF TRANSPORTATION LOCAL AGENCY PROGRAM AGREEMENT FOR THE CONSTRUCTION PHASE OF THE LAKEVIEW BLVD MULTI-USE PATH PROJECT**

**R2018-6**

**Pass  
Motion made to Adopt on consent made by Vice Mayor Cuff and seconded by Mayor Holland**

**Approved - 4 - Vice Mayor Robert Cuff, Council Member Nick Klufas, Council Member Heidi Shipley, Mayor Milissa Holland**

**11. RESOLUTION 2018-XX APPROVING PIGGYBACKING THE FLORIDA SHERIFF'S ASSOCIATION CONTRACT WITH ALAN JAY FLEET SALES FOR A FLEET REPLACEMENT VEHICLE**

**R2018-1**

**Pass**

**Motion made to Adopt on consent made by Vice Mayor Cuff and seconded by Council Member Shipley**

**Approved - 4 - Vice Mayor Robert Cuff, Council Member Nick Klufas, Council Member Heidi Shipley, Mayor Milissa Holland**

**12. RESOLUTION 2018-XX APPROVING A WORK ORDER WITH DRMP, INC., FOR DESIGN SERVICES FOR IMPROVEMENTS TO BELLE TERRE PKWY AT MARKET AVE/EASTWOOD DRIVE**

**R2018-2**

**Pass**

**Motion made to Adopt on consent made by Vice Mayor Cuff and seconded by Mayor Holland**

**Approved - 4 - Vice Mayor Robert Cuff, Council Member Nick Klufas, Council Member Heidi Shipley, Mayor Milissa Holland**

**13. RESOLUTION 2018-XX APPROVING PIGGYBACKING THE CITY OF CLEARWATER CONTRACT WITH CONCRETE CONSERVATION, INC. TO PURCHASE WASTEWATER LINER SYSTEMS**

**R2018-3**

**Pass**

**Motion made to Adopt on consent made by Vice Mayor Cuff and seconded by Mayor Holland**

**Approved - 4 - Vice Mayor Robert Cuff, Council Member Nick Klufas, Council Member Heidi Shipley, Mayor Milissa Holland**

**I. PUBLIC PARTICIPATION**

Remainder of Public Comments is limited to three (3) minutes each.

*Louis McCarthy-Niece. Over the holiday, my niece came in from NYU. She said, she walked along the trail that she came before the City Council but she the path is nice but not complete. It doesn't have lights. I wanted to relay that. Even though she is in college she is still looking at what is going on here. She graduated from Matanzas High School.*

**J. DISCUSSION BY CITY COUNCIL OF MATTERS NOT ON THE AGENDA**



*CM Shipley-I have two things. 1. I got an e-mail. I guess, Mr. Landon got copied on it too . . . about the foot golf? Are we going to move forward on that or are we even going to have them come out and talk to us on that? Ans: Mr. Landon- I turned it over to Alex. I am not sure where we are on Foot Golf. He can get back to you. 2. The lights on Lake View. Are we doing anything on that? Ans: Mr. Landon - I know they were on order to do the segment to do the trial.*

*CM Shipley: Not the FPL Path. I mean actually Lakeview. Ans: Mr. Landon- I asked for an update on that last week. The design is complete and has been submitted to FPL the first part of this month. FPL has to review and approve it. As soon as that happens, then it will come back here because they will have a contract between us. It is moving forward. The design is finished but needs approval.*

**K. DISCUSSION BY CITY ATTORNEY OF MATTERS NOT ON THE AGENDA**

*Nothing at this time.*

**L. DISCUSSION BY CITY MANAGER OF MATTERS NOT ON THE AGENDA**

*Men's Futures Tennis Tournament, where we have the young professional coming to Palm Coast at the end of January 26-February 4 at our Tennis Center. That is always a highlight for anyone who enjoys watching tennis. Birds of a Feather Fest-February February 9-11, 2018. A lot of things, stayed tune. A lot of activities for kids and adults, not just going out on our trails and doing bird watching. But a lot of activities at City Hall and the like.*

**M. ADJOURNMENT**

*The meeting adjourned at 11:02 a.m.*

**14. CALENDAR/WORKSHEET**

**15. ATTACHMENTS TO MINUTES**



**City of Palm Coast  
Minutes  
City Council Special  
Meeting**

City Hall  
160 Lake Avenue  
Palm Coast, FL 32164  
www.palmcoastgov.com

**Mayor Milissa Holland  
Vice Mayor Robert G. Cuff  
Council Member Steven Nobile  
Council Member Nick Klufas  
Council Member Heidi Shipley**

---

**Tuesday, January 30, 2018**

**9:00 AM**

**City Hall**

---

**City Staff**

**Jim Landon, City Manager  
William Reischmann, City Attorney  
Virginia A. Smith, City Clerk**

- > Public Participation shall be in accordance with Section 286.0114 Florida Statutes.
- > Other matters of concern may be discussed as determined by City Council.
- > If you wish to obtain more information regarding the City Council's agenda, please contact the City Clerk's Office at 386-986-3713.
- > In accordance with the Americans with Disabilities Act, persons needing assistance to participate in any of these proceedings should contact the City Clerk at 386-986-3713, at least 48 hours prior to the meeting.
- > City Council Meetings are televised on Charter Spectrum Networks Channel 495 and on AT&T U-verse Channel 99.
- > All pagers and cell phones are to remain OFF while City Council is in session.

**CALL TO ORDER**

*Vice Mayor Cuff called the meeting to order at 9:00 am*

**PLEDGE OF ALLEGIANCE TO THE FLAG**

*VM Cuff led the pledge*

**ROLL CALL**

*Ms. Settle called the roll. Mayor Holland had an excused absence.*

**PUBLIC PARTICIPATION**

Public Participation shall be held in accordance with Section 286.0114 Florida Statutes. After the Mayor calls for public participation each member of the audience interested in speaking on any topic or proposition not on the agenda or which was discussed or agendaed at the previous City Council Workshop, shall come to the podium and state their name. Each speaker will have up to three (3) minutes each to speak. The Mayor will advise when the three (3) minutes are up and the speaker will be asked to take a seat and wait until all public comments are finished to hear answers to all questions. Once all members of the audience have spoken, the Mayor will close public participation and no other questions/comments shall be heard. Council and staff will then respond to questions posed by members of the audience. Should you wish to provide Council with any material, all items shall be given to the City Clerk and made part of the record. If anyone is interested in discussing an issue further or ask additional questions, individual

Council Members and staff will be available after the meeting to discuss the matter and answer questions.

*No comments were received.*

## **RESOLUTIONS**

### **RESOLUTION 2018-XX APPROVING THE 8TH AMENDMENT TO THE CONTRACT FOR THE SALE OF THE CITY PROPERTY WITH TOWN CENTER, LLC**

**R2018-8**

#### **Pass**

**Motion made to approve Motion by Council Member Nobile, seconded by Council Member Shipley to approve. The motion carried unanimously. made by Council Member Nobile and seconded by Council Member Shipley**

**Approved - 4 - Vice Mayor Robert Cuff, Council Member Nick Klufas, Council Member Steven Nobile, Council Member Heidi Shipley**

*Mr. Landon gave a brief over of the item. Mr. Falgout spoke to the details of some of the challenges due to acquiring additional properties and the ensuring the site plan would work. The 8th Amendment was presented to Council.*

## **PUBLIC PARTICIPATION**

Remainder of Public Comments is limited to three (3) minutes each.

*No comments were received.*

## **ADJOURNMENT**

*Motion by Council Member Klufas to adjourn the meeting at 9:06 a.m.*

## City of Palm Coast, Florida Agenda Item

Agenda Date: February 6, 2018

<b>Department Item Key</b>	PLANNING	<b>Amount Account #</b>
<b>Subject</b>	PRESENTATION ON THE THIRD ANNUAL HEALTH AND SAFETY EMPLOYEE CALENDAR	
<b>Background :</b>	<p>The City of Palm Coast Wellness and Safety Teams are proud to present the 3<sup>rd</sup> annual Health &amp; Safety Employee Calendar. Relatives of the City Employees 18 years and younger were invited to participate by submitting a drawing or painting about health, safety and workplace safety that may affect them personally or their family members. These calendars are fun and generate excitement and really brought out the competitive spirit in our kids and employees. We will honor the winners with their own copy of the Health &amp; Safety Calendar along with a City of Palm Coast goody bag and gift cards for the 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> place winners in each age category. The winners will be announced at the City Council's business meeting.</p>	
<b>Recommended Action :</b>	For presentation only.	

# City of Palm Coast, Florida Agenda Item

Agenda Date: February 6, 2018

<b>Department Item Key</b>	PLANNING	<b>Amount Account #</b>
<b>Subject</b>	PRESENTATION BY THE ROTARY CLUB OF FLAGLER COUNTY RECOGNIZING THE PALM COAST VOLUNTEER FIRE/RESCUE INC. FOR THEIR SUPPORT AND ASSISTANCE WITH FANTASY LIGHTS EVENT	
<b>Background :</b>	The Rotary Club of Flagler County would like to recognize the Palm Coast Volunteer Firefighters' Association for their support and assistance with the Fantasy Lights event.	
<b>Recommended Action :</b>	For Presentation only	

## City of Palm Coast, Florida Agenda Item

Agenda Date: 02/06/2018

<p><b>Department</b> PLANNING <b>Item Key</b></p>	<p><b>Amount</b> <b>Account</b> <b>#</b></p>
<p><b>Subject</b> ORDINANCE 2018-XX TO REZONE 40 COLECHESTER LANE FROM MFR-1 TO SFR-1</p>	
<p><b>Update from the January 16, 2018 Business Meeting:</b> City Council heard and approved the first reading on this ordinance at their January 16, 2017 Business Meeting. There were no changes suggested to this item.</p>	
<p><b>Background :</b> The owner, in cooperation with the City, is proposing to rezone approximately .41 +/- acres on the east side of Colchester Lane from Multifamily – 1 (MFR-1) Single Family Residential -1 (SFR-1).</p> <p>The subject property consists of approximately .41 acres of vacant land owned by Nuview IRA, Inc. The applicant has indicated a desire to rezone the property from Multifamily Residential -1 to Single Family Residential-1. This property was originally part of a larger parcel acquired by the City that became part of the Long’s Creek Nature Preserve. This parcel was not purchased by the City and retained the MFR-1 zoning.</p> <p>Over time, it has become apparent that developing the property for multifamily creates a number of challenges given the City’s requirements for this District. For example, the City’s Land Development Code would require commercial standards such as retention, landscaping, fire code and parking circulation. Rezoning the property to single family residential would simplify the development process in many respects and allow the site to be developed as two single-family lots. Single- family development is generally more suitable and compatible manner with the surrounding neighborhood.</p> <p>Similar to other recent actions, the City has worked with the property owner to facilitate this rezoning. The Planning and Land Development Regulation Board heard this item on December 20, 2017 and recommends approval (4 to 1).</p>	
<p><b>Recommended Action :</b> PLDRB and staff recommend approval of Ordinance 2018-xx to rezone 40 Colechester Lane from MFR-1 TO SFR-1.</p>	

**ORDINANCE 2018-\_\_\_\_\_**  
**REZONING APPLICATION NO. 3449**  
**40 COLECHESTER LANE**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, PROVIDING FOR THE AMENDMENT OF THE OFFICIAL ZONING MAP AS ESTABLISHED IN SECTION 2.06 OF THE CITY OF PALM COAST UNIFIED LAND DEVELOPMENT CODE; AMENDING THE OFFICIAL ZONING MAP FOR .41+ ACRES OF CERTAIN REAL PROPERTY DESCRIBED AS TAX PARCEL IDENTIFICATION NUMBER 07-11-31-7016-00020-0010, LOCATED AT 40 COLECHESTER LANE AND BEING MORE PARTICULARLY DESCRIBED IN THE ATTACHED EXHIBIT A, FROM MULTIFAMILY RESIDENTIAL-1 (MFR-1) TO SINGLE FAMILY RESIDENTIAL-1 (SFR-1) ZONING DISTRICT; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Palm Coast, as the governing body of the City, pursuant to the authority vested in Chapter 163 and Chapter 166, Florida Statutes and the City of Palm Coast Unified Land Development Code, is authorized and empowered to consider applications relating to zoning; and

**WHEREAS**, the notice and public hearing requirements, as provided for in Chapter 2 (Review Authority, Enforcement, and Procedures) of the City of Palm Coast Unified Land Development Code have been satisfied; and

**WHEREAS**, the City Council of the City of Palm Coast has considered the evidence and testimony presented by the applicant and other interested parties, the recommendations of the various City reviewing departments, and the recommendation of the Planning and Land Development Regulation Board (PLDRB); and

**WHEREAS**, the City Council has considered the findings in the staff report and the following findings of fact:

1. The rezoning is consistent with the purposes, goals, objectives, and policies of the City of Palm Coast Comprehensive Plan;
2. The rezoning is compatible as defined in the Unified Land Development Code and generally consistent with the uses and character of the land surrounding and in the vicinity of the land proposed for rezoning;
3. The rezoning will result in a logical, timely and orderly development pattern;

4. The staff report has demonstrated sufficient justification that there are changed circumstances, which would require the rezoning request.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF PALM COAST, FLORIDA:**

**SECTION 1. Legislative and Administrative Findings.** The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

**SECTION 2. Official Zoning Map Amended.** The .41 +/- acres of land, identified as tax parcel identification number **07-11-31-7016-00020-0010** located AT 40 Colechester Lane, legally described in “Exhibit A” and as depicted in “Exhibit B,” attached hereto, is hereby amended from the Multifamily Residential-1 (MFR-1) zoning district to Single Family Residential-1 (SFR-1) zoning district.

**SECTION 3. Severability.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

**SECTION 4. Conflicts.** All Ordinances or parts of Ordinances in conflict with this Ordinance are hereby repealed.

**SECTION 5. Effective Date.** This Ordinance shall become effective immediately upon its passage and adoption.

Approved on first reading this 16<sup>th</sup> day of January 2018.

Adopted on the second reading after due public notice and hearing City of Palm Coast this \_\_\_\_ day of \_\_\_\_\_ 2018.

**CITY OF PALM COAST, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
MILISSA HOLLAND, MAYOR

\_\_\_\_\_  
VIRGINIA SMITH, CITY CLERK

Attachments: Exhibit “A” – Legal Description of property subject to Official Zoning Map amendment

Exhibit “B” – Revised Official Zoning Map



**EXHIBIT “A”  
LEGAL DESCRIPTION**

Address: 40 Colechester Lane., Palm Coast, FL. The parcel is also referred to as:

Parcel No: 07-11-31-7016-00020-0010 Legal Description: PALM COAST SEC 16 BLK 2 LT 1 &THE  
WLY 121.56' OF NLY 25' OF RP-A BEING 0.07 AC OR

553/1539OR 652/1697 OR 669/452 OR 765/1315 OR 849/1987 OR 948/1064 OR 1646/957 OR  
2054/1537 OR 2197/1342 OR 2197/1343 OR 2211/755-CD OR 2211/756-CD

Size: 18,020 SF

**EXHIBIT "B"**





**COMMUNITY DEVELOPMENT DEPARTMENT  
STAFF REPORT FOR APPLICATION #3449  
January 16, 2018**

**OVERVIEW**

---

**Application Number:** 3449

**Applicant:** Nuview IRA, Inc. FBO John Morris

**Property Description:** .41 ± acre property located on the east side of Colchester Lane, canal

<b>Property Owner:</b>	Nuview IRA, Inc. FBO John Morris
<b>Parcel ID:</b>	07-11-31-7016-00020-0010
<b>Current FLUM designation:</b>	Residential
<b>Current Zoning designation:</b>	MFR-1 (Multifamily –One)
<b>Current Use:</b>	Vacant
<b>Size of subject property:</b>	.41 ± acres

**Requested Action:** Rezoning from Multifamily – One (MFR-1) to Single Family Residential-1 (SFR-1)

**Recommendation:** Approval

**ANALYSIS**

---

**REQUESTED ACTION**

The owner, in cooperation with the City, is proposing to rezone approximately .41 +/- acres on the east side of Colchester Lane from Multifamily – 1 (MFR-1) Single Family Residential -1 (SFR-1).

**BACKGROUND/SITE HISTORY**

The subject property consists of approximately .41 acres of vacant land owned by Nuview IRA, Inc. The applicant has indicated a desire to rezone the property from Multifamily Residential -1 to Single Family Residential-1. This property was originally part of a larger parcel acquired and become part of the Long's Creek Nature Preserve. This parcel was not purchased, and retained the MFR-1 zoning.

Over time, it has become apparent that developing the property for multifamily creates a number of challenges given the City's requirements for this District. For example, the City's Land Development Code would require commercial standards such as retention, landscaping, fire code and parking circulation. Rezoning the property to single family residential would simplify the development process in many respects and allow the site to be developed as two single-family lots. Single- family development is generally considered more suitable and compatible with the surrounding neighborhood and property adjacent to the Nature Preserve.

The City has partnered with the property owner to facilitate this rezoning.

**LAND USE AND ZONING INFORMATION**

**USE SUMMARY TABLE:**

<b>CATEGORY:</b>	<b>EXISTING:</b>	<b>PROPOSED:</b>
Future Land Use Map (FLUM)	Residential	No change proposed
Zoning District	Multifamily -1	Single Family Residential -1
Overlay District	None	None
Use	Vacant	Single Family homes
Acreage	.41	.41 acres
Access	None	TBD

**SURROUNDING LAND USES:**

NORTH: FLUM: Residential  
Zoning: Single Family Residential -2

SOUTH: FLUM: Conservation  
Zoning: Preservation

EAST: FLUM: Residential  
Zoning: Single Family Residential -2

WEST: FLUM: Canal  
Zoning: Single Family Residential -2

**SITE DEVELOPMENT REQUIREMENTS  
Proposed in Comparison to Existing**

<b>Criteria</b>	<b>SFR-1</b>	<b>MFR-1 (Existing Zoning)</b>
Min. Lot Size	5,000 SF	3 Acres
Min. Site Size	N/A	N/A
Min. Lot Width	50 ft.	25' TH/100' MFR
Max. Impervious area	75 percent	70 percent
Min. Living Area	1200 SF	650 SF
Max. Bldg. Height	35 ft.	50 ft.
Min. Front Setback	20 Ft.	25 ft.
Min. Rear Setback	10 ft.	25 ft.
Min. Interior Side Setback	5 ft.	10 ft.
Min. Street Side Setback	15 ft.	20 ft.
Max. Density (units/acre)	5.8 du/ac	Up to 8 du/ac

## ANALYSIS BASED ON UNIFIED LAND DEVELOPMENT CODE CHAPTER 2 SECTION 2.05.05

The Unified Land Development Code, Chapter 2, Part II, Section 2.05.05 states: *When reviewing a development order application, the approval authority shall determine whether sufficient factual data was presented in order to render a decision. The decision to issue a development order shall be based upon the following, including but not limited to:*

*A. The proposed development must not be in conflict with or contrary to the public interest;*

**Staff Finding:** The proposed development is not in conflict with, or contrary to, the public interest. The property is bounded by single-family zoning and land uses to the north, as one would expect within a largely developed residential neighborhood.

*B. The proposed development must be consistent with the Comprehensive Plan and the provisions of this LDC;*

**Staff Finding:** The request is consistent with the following objectives and policies of the Comprehensive Plan:

- **Chapter 3 Housing Element:**

*-Objective 3.3.5 – Protect predominantly residential areas from the intrusion of incompatible or more intensive land uses.*

The applicant proposes to rezone the property to MFR-1 to SFR-1. The rezoning will protect the residential area from the intrusion of potentially conflicting land uses, and establish that future development of the site will be in harmony with the surrounding properties.

*C. The proposed development must not impose a significant financial liability or hardship for the City;*

**Staff Findings:** Rezoning the subject property to SFR-1 will not impose a significant financial liability or hardship for the City. The property is located in a developing area adjacent to Long's Creek Nature Preserve.

*D. The proposed development must not create an unreasonable hazard, or nuisance, or constitute a threat to the general health, welfare, or safety of the City's inhabitants;*

**Staff Finding:** The rezoning will not create an unreasonable hazard, or nuisance, or constitute a threat to the general health, welfare, or safety of the City's inhabitants. Future development of the site must comply with the performance standards contained in Unified Land Development Code (ULDC). Additionally, the approval of the rezoning will provide a new opportunity for additional single-family lots in this vicinity.

*E. The proposed development must comply with all other applicable local, state and federal laws, statutes, ordinances, regulations, or codes;*

**Staff Finding:** The future development of the property must comply with the City's Land Development Code, Comprehensive Plan and the requirements of all other applicable local, state and federal laws, statutes, ordinances, regulations and codes in order for the developer to successfully develop the property.

## ANALYSIS BASED ON UNIFIED LAND DEVELOPMENT CODE CHAPTER 2 SECTION 2.06.03

The Unified Land Development Code, Chapter 2, Part II, Sec. 2.06.03 states: “*The Planning and Land Development Regulation Board and City Council shall consider the following criteria, in addition to the findings listed in Subsection 2.05.05, when reviewing a rezoning application*”:

A. *Whether it is consistent with all adopted elements of the Comprehensive Plan and whether it furthers the goals and objectives of the Comprehensive Plan;*

**Staff Finding:** As noted previously in the analysis prepared for ULDC Chapter 2, Part II, Section 2.05.05 of this staff report, the requested rezoning is in conformance with the Comprehensive Plan elements, and their goals, objectives and policies.

B. *Its impact upon the environment and natural resources;*

**Staff Finding:** The property is adjacent to the entrance of Long’s Creek Nature Preserve. A fifteen-foot access easement is located on the easternmost portion of the site. The potential for two single-family lots is arguably a more compatible and suitable land use than a multifamily density.

C. *Its impact on the economy of any affected area;*

**Staff Finding:** Impacts to the economy of the affected area are anticipated to be positive. Development of the subject parcel will be consistent with overall property values in the area, as well as provide an environment more hospitable to development in proximity to the subject property than the existing multifamily development.

D. *Its impact upon necessary governmental services such as schools, sewage disposal, potable water, drainage, fire and police protection, solid waste, or transportation;*

**Staff Finding:** The impact on the necessary governmental services including wastewater, potable water, drainage, fire and police protection, solid waste and transportation systems shall be evaluated at the time of permit application. Future permits must fall within the adopted Level of Service Standards for all categories of services per the requirements of the City’s ULDC.

E. *Any changes in circumstances or conditions affecting the area;*

**Staff Finding:** The site is located at the entrance of Long’s Creek Nature Preserve. The Preserve as created in 2008 by purchasing the development rights associated with a proposed condominium regime. With the purchase of the property for public use and conservation, a lower density can be considered more compatible and suitable.

F. *Compatibility with proximate uses and development patterns, including impacts to the health, safety, and welfare of surrounding residents;*

**Staff Finding:** The rezoning will allow the development of a two single-family residential lots, which is similar to the developed residential area to the north. The proposed rezoning is thus compatible with the surrounding uses and zoning districts and will not threaten the general health, welfare or safety of the surrounding residents.

G. *Whether it accomplishes a legitimate public purpose:*

**Staff Finding:** Yes, the rezoning accomplishes a legitimate public purpose. The rezoning of the property and subsequent development into single family residential will be compatible and more of a transition to the preservation area to the south.

## **PUBLIC PARTICIPATION**

Unified Land Development Code Chapter 2, Part II, Section 2.05.02 requires developers (defined as property owners or persons who are improving property within the City) to notify owners within 300 feet and hold a neighborhood meeting for Zoning Map Amendments.

To comply with this standard, the City notified the property owners via regular mail on November 28, 2017 for a neighborhood meeting to be held on December 11, 2017 at 5:30 p.m. No residents attended.

The required legal advertisement for the public hearing for the Planning and Land Development Regulation Board meeting was placed in the December 6, 2017 paper of local circulation.

## **PLDRB RECOMMENDATION**

At their December 20, 2017 meeting the Planning and Land Development Regulation Board (PLDRB) recommended approval of application number 3449 to rezone .41 +/- acres from Multifamily -1 (MFR-1) to Single Family Residential -1 (4-1).


## **STAFF RECOMMENDATION**

Staff recommends approval of f application number 3449 to rezone .41 +/- acres from Multifamily -1 (MFR-1) to Single Family Residential -1.

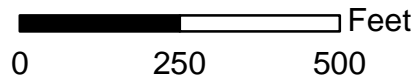


### Location Map

**40 Colechester Ln**

 PIN 0711317016000200010

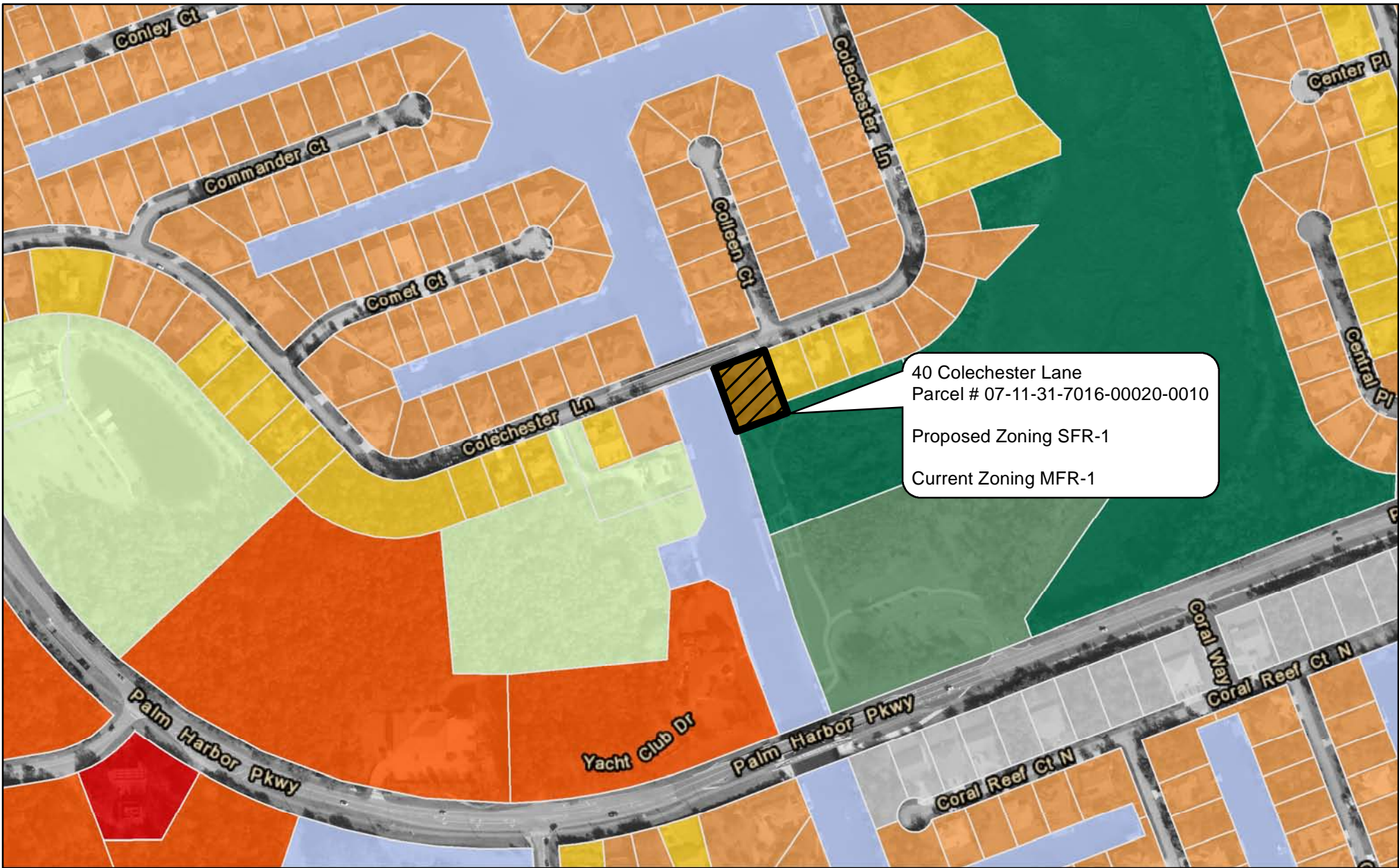
**2017 FDOT Imagery**



**Map Provided by the GIS Division**

**Date: 11/22/2017**





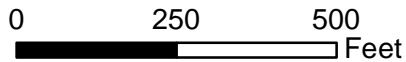
40 Colechester Lane  
 Parcel # 07-11-31-7016-00020-0010  
 Proposed Zoning SFR-1  
 Current Zoning MFR-1

### Zoning Map






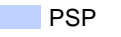




40 Colechester Ln  
 PIN 0711317016000200010

 Proposed Zoning SFR-1

FDOT 2017 Imagery



### Palm Coast Zoning Districts

- |   |   |   |
|---|---|---|
|  COM-1 |  EST-1 |  PRS   |
|  COM-2 |  MFR-1 |  PSP   |
|  DPX   |  P & G |  SFR-2 |
|   |   |  SFR-3 |



Map Provided by the GIS Division

Date: 12/7/2017

The City of Palm Coast prepares and uses this map/map data for its own purposes. This map/map data displays general boundaries and may not be appropriate for site specific uses. The City uses data believed to be accurate; however, a degree of error is inherent in all maps. This map/map data is distributed AS-IS without warranties of any kind, either expressed or implied including, but not limited to, warranties of suitability to a particular purpose or use. This map/map data is intended for use only at the published scale. Detailed on-the-ground surveys and historical analyses of sites may differ substantially from this map/map data.

BARRETT MARTIN & MARYANNE H&W  
50 COLECHESTER LN  
PALM COAST, FL 321379039

BENTLEY DEMAREE JEAN  
44 COLECHESTER LANE  
PALM COAST, FL 32137

BOSSEN MICHAEL D & MARIA A  
DEBENEDETTO JTWROS  
660 ISLAND WAY UNIT 603  
CLEARWATER, FL 33767

CITY OF PALM COAST  
160 LAKE AVENUE  
PALM COAST, FL 32164

CITY OF PALM COAST  
160 LAKE AVENUE  
PALM COAST, FL 32164

CITY OF PALM COAST  
160 LAKE AVENUE  
PALM COAST, FL 32164

CITY OF PALM COAST  
160 LAKE AVENUE  
PALM COAST, FL 32164

DANZA PHILIP  
8 COLLEEN CT  
PALM COAST, FL 32137

DICKENSON JAMES O & LAUREL L  
DICKENSON H&W  
415 VISTA RIDGE  
RADFORD, VA 24141

DIVERIO PAUL  
2 WATERFORD CT  
RINGWOOD, NJ 07456

DUBARRY ETIENNE TRUSTEE  
9768 SE CRAPE MYRTLE CT  
HOBE SOUND, FL 33455

ERVIN ROBERT W &  
DEBORAH E H&W  
37 COLECHESTER LANE  
PALM COAST, FL 32137

GOEBNER DONALD K &  
ELIZABETH P - LIFE ESTATE  
57 COLECHESTER LN  
PALM COAST, FL 32137

KOLOMOTSEV SERGEI S &  
CHERYL L H&W  
8 COLLEGE COURT  
PALM COAST, FL 32137

KOULIEVA ELMIRA & RASUL  
GULIYEV W&H  
34B COLECHESTER LANE  
PALM COAST, FL 32137

KRUCZKOWSKI KAROL & BARBARA  
KRUCZKOWSKA H&W  
PO BOX 2144  
AQUEBOGUE, NY 119312144

KUYKENDALL JAMES & CARLYN H&W  
20 COMET COURT  
PALM COAST, FL 32137

LEE RICKIE  
48 COLECHESTER LANE  
PALM COAST, FL 32137

LOURENCO DALE R & YVONNE  
H&W  
38A ELM STREET  
HANSON, MA 02341

NICHOLS RONNIE VERNON  
36 COLECHESTER LANE  
PALM COAST, FL 32137

NUVIEW IRA INC FBO JOHN MORRIS  
280 S RONALD REAGAN BLVD  
SUITE 200  
LONGWOOD, FL 32750

PROKUBOVSKIY ALEXEY & NATALIA  
KISLYAK H&W  
17 FLETCHER CT  
PALM COAST, FL 32137

PROSSER RODNEY ALAN  
TRUSTEE  
9 COLLEEN COURT  
PALM COAST, FL 32137

REID ROBERT &  
JANE BLAIR H&W  
39 COLECHESTER LANE  
PALM COAST, FL 32137

ROQUE ANGEL C &  
OFELIA M  
37 HARRIOT PLACE  
HARRINGTON PARK, NJ 07640

SALVAGGIO VINCENT & ANTONIO &  
CALOGERA L H&W JTWROS  
11021 SW 140TH AVENUE  
MIAMI, FL 33186

SCHULE ALLAN W & SUSAN H&W  
22 COMET COURT  
PALM COAST, FL 32137

TAVARES LUCIO & FATIMA M  
TAVARES H&W  
12 OAK LANE  
GREEN BROOK, NJ 08812

WEBER STEVEN D & LISA A H&W  
LIFE ESTATE  
4 COLLEEN CT  
PALM COAST, FL 32137

ZAWATSKI GARY W & LOU ANN  
ZAWATSKI H&W  
PO BOX 351609  
PALM COAST, FL 32135



# City of PALM COAST

Community Development Department  
Planning Division

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3736

November 28, 2017

**RE: Notice for Neighborhood Meeting on Proposed Rezoning for the follow Subject Property**  
**Address:** 40 Colechester Lane., Palm Coast, FL. The parcel is also referred to as:  
**Parcel No:** 07-11-31-7016-00020-0010  
**Size:** 18,020 SF

Dear Property Owner:

You are invited to a neighborhood meeting to discuss the proposed zoning map amendment (rezoning) for the subject properties outlined on the attached map.

The subject site is currently zoned Multi-Family Residential or (MFR-1). This zoning designation mainly permits multi-family development such as apartments, townhouses, or condominiums.

Under the proposed rezoning (the request is Single Family Residential-1), the properties will be limited **in development to single-family residential uses** as referred to in the City's Zoning Ordinance. ([https://www.municode.com/library/fl/palm\\_coast/codes/land\\_development\\_code?nodetid=PACOU\\_NLADECO\\_CH3ZOUSDIST\\_S3.02REZODI](https://www.municode.com/library/fl/palm_coast/codes/land_development_code?nodetid=PACOU_NLADECO_CH3ZOUSDIST_S3.02REZODI))

The neighborhood meeting is to be held at:

City of Palm Coast City Hall – Community Wing  
160 Lake Ave., Palm Coast, FL 32164  
Monday, December 11, 2017  
5:30 p.m.

If you have any questions, please do not hesitate to call or write Ida Meehan, Senior Planner, 386-986-2482 or [IMeehan@palmcoastgov.com](mailto:IMeehan@palmcoastgov.com).

Sincerely,

Ida Meehan, AICP, Senior Planner

c. Ray Tyner, Planning Manager

# City of Palm Coast, Florida Agenda Item

Agenda Date : 02/06/2018

<b>Department Item Key</b>	CITY CLERK	<b>Amount Account #</b>
<b>Subject</b>	ORDINANCE 2018-XX REPEALING CHAPTER 54 WIRELESS TELECOMMUNICATIONS OF THE CITY'S CODE OF ORDINANCES AND AMEND CHAPTER 4 WIRELESS COMMUNICATION FACILITIES OF THE UNIFIED LAND DEVELOPMENT CODE	
<b>Background :</b>		
<b><u>UPDATE FROM JANUARY 16, 2018 BUSINESS MEETING</u></b>		
There have been a few minor revisions to the proposed ordinance since the first reading. These revisions were suggested by our consultant and are supported by City staff and attorney. The few revisions have been highlighted in the document.		
<b><u>UPDATE FROM THE JANUARY 9, 2018 WORKSHOP</u></b>		
This item was heard by City Council at their January 9, 2018 Workshop. There were no changes suggested to this item. However, there were some final legal revisions made to the Ordinance, which are highlighted in yellow.		
<b><u>ORIGINAL BACKGROUND FROM THE JANUARY 9, 2018 WORKSHOP</u></b>		
The wireless communications project under consideration consists of three components: a revised Wireless Communication Facilities Ordinance in the City's Land Development Code, proposed amendments to the City's ROW Ordinance to regulate small cell facilities in the ROW, and a proposed Wireless Master Plan.		
This item is to repeal Chapter 54 "Wireless Telecommunications" of the Code of Ordinances and amend Section 4-20, "Wireless Communication Facilities" of Chapter 4, "Conditions for limited specific uses and activities" in the City's Unified Land Development Code.		
The proposed revisions to Section 4.20 of the City's Unified Land Development Code includes the following changes:		
<ol style="list-style-type: none"> <li>1) Allowance for administrative review for specified applications, included recommended sites within the City's proposed Wireless Master Plan (WMP);</li> <li>2) Promote publically-owned properties identified in the WMP as the most suitable for siting telecommunication facilities and create incentives for their use;</li> <li>3) Provide renewed guidance and assistance to telecommunication applicants in the siting and design of proposed facilities.</li> </ol>		
<b>Recommended Action :</b>		
Adopt Ordinance 2018-XX repealing Chapter 54 Wireless Telecommunications of the City's Code of Ordinances and amend Chapter 4 Wireless Communication Facilities of the Unified Land Development Code.		

**ORDINANCE 2018-\_\_\_\_**  
**AMENDING THE UNIFIED LAND DEVELOPMENT CODE**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA REPEALING CHAPTER 54 “WIRELESS TELECOMMUNICATIONS” OF THE CODE OF ORDINANCES OF THE CITY OF PALM COAST; AMENDING THE UNIFIED LAND DEVELOPMENT CODE OF THE CITY OF PALM COAST BY AMENDING CHAPTER 3, “ZONING, USES, AND DIMENSIONAL STANDARDS”, SECTION 3.02.01 “RESIDENTIAL ZONING DISTRICTS”, TABLE 3-2, TO CROSS REFERENCE SECTION 4.20 RELATING TO WIRELESS COMMUNICATION FACILITIES; AND AMENDING SECTION 3.03.02 “NONRESIDENTIAL AND MIXED USE DISTRICTS – ALLOWABLE USES”, TABLE 3-4, TO CROSS REFERENCE SECTION 4.20 RELATING TO WIRELESS COMMUNICATION FACILITIES; REPEALING AND REPLACING SECTION 4-20, “WIRELESS COMMUNICATION FACILITIES” OF CHAPTER 4, “CONDITIONS FOR LIMITED SPECIFIC USES AND ACTIVITIES” TO AMEND AND UPDATE REGULATIONS REGARDING COMMUNICATIONS FACILITIES CONSISTENT WITH APPLICABLE STATE AND FEDERAL LAW, AND TO RENAME SECTION 4.20 TO READ “WIRELESS TELECOMMUNICATIONS”; AMENDING SECTION 14.02, “GLOSSARY” TO UPDATE DEFINITIONS RELATING TO WIRELESS COMMUNICATION FACILITIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, advances in telecommunications infrastructure have been developed which help to meet wireless system capacity demands in dense areas through the deployment of localized networks of antennas; and

**WHEREAS**, the provisions of the City of Palm Coast Unified Land Development Code regulating communication towers and communication antennas require updating to address current technology and practices utilizing wireless communication facilities on real property and in the public rights-of-way; and

**WHEREAS**, it is in the best interests of the citizens, business, and visitors in the City of Palm Coast to ensure there is sufficient wireless communication service; and

**WHEREAS**, the City of Palm Coast has a substantial and significant public interest in regulating the siting of communication towers, communication antennas, and wireless communication facilities to promote the public health, safety, aesthetics, and general welfare; and

**WHEREAS**, the City of Palm Coast has a substantial and significant public interest in protecting residential areas and land uses from potential adverse impacts of communication towers, communication antennas, and wireless communication facilities; and

**WHEREAS**, the City of Palm Coast desires to avoid potential damage to adjacent properties from tower or wireless communication facility failure through engineering and careful siting; and

**WHEREAS**, the City of Palm Coast desires to accommodate the growing need and demand for communication services while minimizing visual and other impacts of wireless communication facilities on surrounding areas by establishing standards for location, design, landscape screening, and compatibility; and

**WHEREAS**, the Emergency Communications Number E911 Act, Chapter 365, Florida Statutes, (the "Act") addresses, inter alia, local governments' regulation of the placement, construction or modification of wireless communications facilities; and

**WHEREAS**, the Act establishes parameters for the regulation of communications facilities, and allows local governments to review any applicable land development or zoning issue, including, but not limited to, aesthetics, landscaping, land use based location priorities, structural design, and setbacks; and

**WHEREAS**, Section 337.401 et seq., Florida Statutes, addresses, inter alia, the authority of municipalities to regulate the placement and maintenance of communications facilities in the public rights-of-way; and

**WHEREAS**, the Florida Legislature has adopted, and on June 23, 2017, the Governor signed into law, effective July 1, 2017, the Advanced Wireless Infrastructure Deployment Act codified at Section 337.401(7), Florida Statutes, which places certain limitations on local government authority to regulate the collocation of small wireless facilities within the public rights-of-way; and

**WHEREAS**, courts applying Florida and federal law have held that a municipality may impose reasonable design limitations on communications facilities that deal directly with a concern for aesthetics and may regulate the placement of wireless facilities where such regulation does not prohibit or effectively prohibit the provision of wireless services; and

**WHEREAS**, the City Council of the City of Palm Coast desires to establish uniform standards and guidelines for the siting, design, and permitting of communication towers, communication antennas, and wireless communication facilities in the City of Palm Coast and to establish review procedures to ensure that applications for same are acted upon consistent with state and federal law; and

**WHEREAS**, at a regularly scheduled meeting on January 17, 2018, the City's Planning and Land Development Regulation Board voted in favor of the proposed revisions; and

**WHEREAS**, the City Council hereby finds this Ordinance consistent with the Comprehensive Plan of the City of Palm Coast, and in the best interest of the public health, safety, and welfare of the public and citizens of the City of Palm Coast, Florida, while complying with the Act and all other state and federal laws and regulations governing communications facilities; and

**WHEREAS**, words with double underlined type shall constitute additions to the original text and ~~strike through~~ type shall constitute deletions to the original text, and asterisks (\* \* \*)

indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF PALM COAST, FLORIDA:**

**SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.** The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

**SECTION 2. REPEALING CHAPTER 54, WIRELESS TELECOMMUNICATIONS.** That Chapter 54, Wireless Telecommunications, of the City of Palm Coast Code of Ordinances, is hereby repealed in its entirety.

**SECTION 3. AMENDING TABLE 3-2 OF SECTION 3.02.02.** That Table 3-2, of Section 3.02.02, Residential Districts—Allowable Uses, of Chapter 3, Zoning, Uses, and Dimensional Standards, of the Unified Land Development Code of the City of Palm Coast is hereby amended to read as follows:

*Table 3-2. Residential Zoning Districts—Use Table*

\* \* \*

USES	SFR-1	SFR-2	SFR-3	SFR 4 & 5	EST-1	EST-2	AGR	DPX	MFR 1 & 2	MHD	MPD
Veterinary Clinics and Services	-	-	-	-	-	S	P	-	-	-	P
Wholesale/Retail Fertilizer Sales	-	-	-	-	-	-	P	-	-	-	-
Wireless Communication Facilities (L)	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>

**SECTION 4. AMENDING TABLE 3-4 OF SECTION 3.03.02.** That Table 3-4, of Section 3.03.02, Nonresidential and Mixed Use Districts – Allowable Uses, of Chapter 3, Zoning, Uses, and Dimensional Standards, of the Unified Land Development Code of the City of Palm Coast is hereby amended to read as follows:



Table 3-4. Nonresidential and Mixed Use Zoning Districts – Use Table

\* \* \*

Specific Use Type	COM-1	COM-2	COM-3	OFC-1	OFC-2	IND-1	IND-2	PSP	P & G	PRS	MPD 1
Wastewater Treatment Facilities	-	-	-	-	-	-	-	S	-	-	-
Water Supply Plants	-	-	-	-	-	-	-	S	-	-	P
Wireless Communication Facilities (L)	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>	<u>P-L</u>

\* \* \*

**SECTION 5. REPEAL AND REPLACEMENT OF SECTION 4.20, WIRELESS COMMUNICATION FACILITIES.** That Section 4.20, Wireless Communication Facilities, of Chapter 4, Conditions for Limited Specific Uses and Activities, of the City of Palm Coast Unified Land Development Code is hereby repealed and reestablished as shown in Attachment “A”.

**SECTION 6. AMENDMENT OF SECTION 14.02, GLOSSARY.** That Section 14.02 of Chapter 14, Glossary, of the City of Palm Coast Unified Land Development Code is hereby amended as shown in Attachment “B”.

**SECTION 7. SEVERABILITY.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

**SECTION 8. CODIFICATION.** It is the intention of the City Council of the City of Palm Coast, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Palm Coast, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, "Ordinance" may be changed to "Section," "Article," or other appropriate word.

**SECTION 9. CONFLICTS.** All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

**SECTION 10. EFFECTIVE DATE.** This Ordinance shall become effective immediately upon its passage and adoption.

Approved on first reading this \_\_\_ day of \_\_\_\_\_ 2018.

Adopted on second reading after due public notice and hearing this \_\_\_ day of \_\_\_\_\_ 2018.

**CITY OF PALM COAST, FLORIDA**

ATTEST:

\_\_\_\_\_  
MILISSA HOLLAND, MAYOR

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

Approved as to form and legality

\_\_\_\_\_  
William E. Reischmann Jr. Esq.

ATTACHMENT "A"

SECTION 4.20 - WIRELESS TELECOMMUNICATIONS

Sec. 4.20.01. - Legislative purposes.

A. The legislative purposes of this section are to:

- (1) Promote the health, safety, and general welfare of the public by regulating the siting of wireless communication facilities.
- (2) Minimize the impacts of wireless communication facilities on surrounding areas by establishing standards for location, structural integrity and land use compatibility.
- (3) Establish standards for preferred siting, design and screening by requiring consistency with the City's Wireless Master Plan, consistent with the Telecommunications Act of 1996, and Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act").
- (4) Encourage the use of public lands, buildings, and structures as locations for wireless telecommunications infrastructure thereby establishing more ability to manage selected sites identified in the City's Wireless Master Plan.
- (5) Encourage coordination and collocation of antennas on existing structures to meet coverage needs and promote the efficient use of existing infrastructure.
- (6) Accommodate the growing need and demand for wireless communications services in a manner that ensures the placement, construction or modification of wireless communication facilities complies with all applicable state and federal laws.
- (7) Ensure there is sufficient wireless infrastructure to support public safety communication services throughout the City, including times of evacuation and disaster response.
- (8) Encourage providers of wireless communication facilities to locate wireless communication facilities in areas where the need is demonstrated and planned for and adverse impacts on the community is minimal.
- (9) Respond to the rational policies embodied in the Telecommunications Act of 1996 in such a manner as not to unreasonably discriminate between providers of functionally equivalent personal wireless services or to prohibit or have the effect of prohibiting personal wireless services.
- (10) Ensure that land use decisions are made in consideration of, and in compatibility with, the goals, objectives and policies of the City of Palm Coast Comprehensive Plan and its land development regulations as set forth in the Land Development Code (LDC).

B. It is the intent of this section that all actions of the City be consistent with controlling federal and state law.

C. The City Council of the City of Palm Coast hereby finds and determines that this section is consistent with the goals, objectives and policies of the City of Palm Coast Comprehensive Plan and other controlling law.

Sec. 4.20.02. - Definitions.

*Ancillary structure* means, for the purposes of this section, any form of development associated with a WCF including, but not limited to: foundations, concrete slabs on grade, guy anchors, generators, and transmission cable supports; provided, however, specifically excluding equipment cabinets.

*Anti-climbing device* means a piece or pieces of equipment, which are either attached to an antenna support structure, or which are freestanding and are designed to prevent people from climbing the structure. These devices may include, but are not limited to, fine mesh wrap around structure legs, "squirrel-cones," or other approved devices, but excluding the use of barbed or razor wire.

*Antenna* means any apparatus designed for the transmitting and/or receiving of electromagnetic waves including, but not limited to: telephonic, radio or television communications. Types of elements include, but are not limited to: omni-directional (whip) antennas, sectionerized (panel) antennas, multi or single bay (FM and TV), yagi, or parabolic (dish) antennas.

*Antenna array* means a single or group of antenna elements and associated mounting hardware, transmission lines, or other appurtenances which share a common attachment device such as a mounting frame or mounting support structure for the sole purpose of transmitting or receiving electromagnetic waves.

*Antenna element* means any antenna or antenna array.

*Freestanding WCF or collocations* means those where the antenna or antenna array is located on towers, concealed or nonconcealed, together with the ancillary structures, feed lines, equipment shelters, and other necessary facilities, which may be located either on or in the tower.

*Attached WCF* means an antenna or antenna array that is secured to an existing base station with any accompanying pole or device which attaches it to the building or structure, together with transmission cables, and an equipment cabinet, which may be located either on the roof or inside/outside of the building or structure. An attached WCF is considered to be an accessory use to the existing principal use on a site.

*Base Station* means a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined herein, or any equipment associated with a tower. "Base station" includes, without limitation:

(1) Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

(2) Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems ("DAS") and small-cell networks).

(3) Any structure other than a tower that, at the time the relevant application is filed with the City under this subsection, supports or houses equipment described in subsections (1) and (2) of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time the relevant application is filed with the City under this subsection, does not support or house equipment described in subsections (1) and (2) of this definition.

*Breakpoint technology* means the engineering design of a monopole wherein a specified point on the monopole is designed to have stresses concentrated so that the point is at least five percent more susceptible to failure than any other point along the monopole so that in the event of a structural failure of the monopole, the failure will occur at the breakpoint rather than at the base plate, anchor bolts, or any other point on the monopole.

*Collocation* means the situation in which a second or subsequent communications services provider or a pass-through provider uses an existing structure to locate a second or subsequent antenna or wireless communication facility. The term includes the ground, platform, or roof installation of equipment enclosures, cabinets, or buildings, and cables, brackets, and other equipment associated with the location and operation of a communication antenna.

*Combined antenna* means an antenna or an antenna array designed and utilized to provide services for more than one wireless provider for the same or similar type of services.

*Concealed* means a tower, base station, ancillary structure, or equipment compound that is not readily identifiable as a wireless communication facility, and is designed to be aesthetically compatible with existing and proposed building(s) and uses on a site or in the neighborhood or area. There are two types of concealed facilities:

(1) Concealed base stations may include painted antenna and feed lines to match the color of a building or structure, faux parapets, windows, dormers, or other architectural features that blend with an existing or proposed or structure.

(2) Concealed freestanding towers which look like something else that is common in the region such as a church steeple, bell tower, clock tower, light standard, flagpole with a flag that is proportional in size to the height and girth of the tower, or tree that grows naturally or is commonly found in the area.

*Development area* means the area occupied by a WCF including, but not limited to, areas inside or under the following: an antenna-support structure's framework, equipment cabinets, ancillary structures and access ways.

*Eligible Facilities Request* means any request for modification of an existing tower or base station that, in accordance with the definitions contained in FCC regulations codified at 47 C.F.R. § 1.40001, does not substantially change the physical dimensions of the existing support structure and is requesting:

- (1) Collocation of new transmission equipment;
- (2) Removal of existing transmission equipment; or
- (3) Replacement of existing transmission equipment.

*Eligible support structure* means any tower or base station that is existing at the time the relevant application is filed with the City under this subsection.

*Environmentally Sensitive Lands* are as provided in Chapter 10 of the Unified Land Development Code-Environmental and Cultural Resource Protection.

*Equipment cabinet* means any structure above the base flood elevation including, but not limited to, cabinets, shelters, pedestals, and other similar structures. Equipment cabinets are used exclusively to contain radio or other equipment necessary for the transmission or reception of wireless communication signals.

*Equipment compound* means the fenced area surrounding the ground-based wireless communication facility including, but not limited to, the areas inside or under the following: the tower's framework and ancillary structures such as equipment necessary to operate the antenna on the WCF that is above the base flood elevation including: cabinets, shelters, pedestals, and other similar structures.

*Equipment facility* means a room, cabinet, shelter, pedestal, build-out of an existing structure, building, or similar structure used to house ancillary equipment for a communication tower or antenna. Each such cabinet, shelter, or building shall be considered a separate equipment facility.

*Existing* means a constructed tower or base station existing for purposes of this section that has been reviewed and approved under the applicable zoning or siting process, or under another State or local regulatory review process, provided that a tower that has not been reviewed because it was not in a zoned area when it was built, but was lawfully constructed, is existing for purposes of this subsection.

*Expedited collocation application* means collocation applications, or portions thereof, on towers or base stations, excluding collocations on a historic building, structure, site, object, or district, that meet the criteria set forth in Section 365.172(13)(a), F.S., as amended.

*FAA* means the Federal Aviation Administration.

*FCC* means the Federal Communications Commission.

*Feed lines* means cables used as the interconnecting media between the transmission/receiving base station and the antenna.

*Flush-mounted* means any antenna or antenna array attached directly to the face of the support structure or building such that no portion of the antenna extends above the height of the support structure or building. Where a maximum flush-mounting distance is given, that distance shall be measured from the outside edge of the support structure or building to the inside edge of the antenna.

*Guyed structure* (see tower). Guyed structures for new WCFs are prohibited within the City.

*Geographic search ring* means an area designated by a wireless provider or operator for a new base station, produced in accordance with generally accepted principles of wireless engineering.

*Handoff candidate* means a wireless communication facility that receives call transference from another wireless facility, usually located in an adjacent first "tier" surrounding the initial wireless facility.

*Lattice structure* (see Tower). Lattice structures for new WCFs are prohibited within the City.

*Least visually obtrusive profile* means the design of a wireless communication facility intended to present a visual profile that is the minimum profile necessary for the facility to properly function.

*Level I* refers to a wireless communication facility permit subject to administrative review and approval by the Land Use Administrator or designee, with no public hearing requirement.

*Level II* refers to wireless communication facility permit subject to the special exception approval process set forth in Section 2.07 of the Land Development Code, except that the application review and approval timeframes set forth in Section 4.20.10 shall apply. New towers proposed in non-Wireless Master

Plan Sites shall require Level II permits. All other installations only require Level I permits.

*Micro Wireless Facility (see Section 42-103).*

*Modification* means a modification of an existing tower or base station to increase the height, or to improve its integrity, by replacing or removing one or several tower(s) located in proximity to a proposed new tower in order to encourage compliance with this section or improve aesthetics or functionality of the overall wireless network.

*Monopole structure (see Tower).*

*Non-concealed WCF* means a wireless communication facility that is readily identifiable as such and can be either freestanding or attached.

*Personal wireless service* means commercial mobile services, unlicensed wireless services, and common carrier wireless exchange access services, as defined in the Telecommunications Act of 1996.

*Public safety communications equipment* means all communications equipment utilized by a public entity for the purpose of ensuring the safety of the citizens of the City and operating within the frequency range of 700 MHz and 1,000 MHz and any future spectrum allocations at the direction of the FCC.

*Public View* means a non-amplified visual range of site from rights-of-ways, sidewalks, adjacent properties, or other publically accessible vantage points.

*Radio frequency (RF) emissions* means any electromagnetic radiation or other communications signal emitted from an antenna or antenna-related equipment on the ground, antenna support structure, building, or other vertical projection.

*Radio frequency (RF) propagation* means wireless telecommunications signal service area as shown on maps.

*Satellite Earth Station* means a single or group of parabolic (or dish) antennas are mounted to a support device that may be a pole or truss assembly attached to a foundation in the ground, or in some other configuration. A satellite earth station may include, but is not limited to, the associated separate equipment cabinets necessary for the transmission or reception of wireless communications signals with satellites.

*Site* means for towers other than towers in the public rights-of-way, the current boundaries of the leased or owned property surrounding the tower, and any access or utility easements currently related to the site, and, for other eligible support structures, further restricted to that area in proximity to the structure and to other transmission equipment already deployed on the ground.

*Small wireless facility (See Section 42-103).*

*Substantial Change* means a modification that substantially changes the physical dimensions of an eligible support structure if it meets any of the following criteria:

(1) For towers other than towers in the public rights-of-way, it increases the height of the tower by more than 10 percent or by the height of one additional antenna array with separation from the nearest existing antenna not to exceed 20 feet, whichever is greater; for other eligible support structures, it increases the height of the structure by more than 10 percent or more than 10 feet, whichever is greater. Changes in height should be measured from the original support structure in cases where deployments are or will be separated horizontally, such as on buildings' rooftops; in other circumstances, changes in height should be measured from

the dimensions of the tower or base station, inclusive of originally approved appurtenances and any modifications that were approved prior to the passage of the Spectrum Act;

(2) For towers other than towers in the public rights-of-way, it involves adding an appurtenance to the body of the tower that would protrude from the edge of the tower more than 20 feet, or more than the width of the tower structure at the level of the appurtenance, whichever is greater; for other eligible support structures, it involves adding an appurtenance to the body of the structure that would protrude from the edge of the structure by more than six feet;

(3) For any eligible support structure, it involves installation of more than the standard number of new equipment cabinets for the technology involved, but not to exceed four cabinets; or, for towers in the public rights-of-way and base stations, it involves installation of any new equipment cabinets on the ground if there are no preexisting ground cabinets associated with the structure, or else involves installation of ground cabinets that are more than 10 percent larger in height or overall volume than any other ground cabinets associated with the structure;

(4) It entails any excavation or deployment outside the current site;

(5) It would defeat the concealment elements of the eligible support structure; or

(6) It does not comply with conditions associated with the siting approval of the construction or modification of the eligible support structure or base station equipment; provided, however, that this limitation does not apply to any modification that is noncompliant only in a manner that would not exceed the thresholds identified in subsections (1) through (4) of this definition.

*Tower* means any structure built for the sole or primary purpose of supporting any FCC- licensed or authorized antennas and their associated facilities, including structures that are constructed for wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul, and the associated site. Towers do not include any device used to attach antennas to an existing building, unless the device extends above the highest point of the building by more than 20 feet. A tower may be concealed or non-concealed. Non-concealed towers include:

(1) *Guyed structure* means a style of tower consisting of a single truss assembly composed of sections with bracing incorporated. The sections are attached to each other, and the assembly is attached to a foundation and supported by a series of wires that are connected to anchors placed in the ground or on a building. Guyed structures for new WCFs are prohibited within the City.

(2) *Lattice structure* means a self-supporting tapered style of tower that consists of vertical and horizontal supports with multiple legs and cross-bracing, and metal crossed strips or bars to support antennas. Lattice structures for new WCFs are prohibited within the City.

(3) *Monopole structure* means a style of freestanding tower consisting of a single shaft usually composed of two or more hollow sections that are in turn attached to a foundation. This type of tower is designed to support itself without the use of guy wires or other stabilization devices. These facilities are mounted to a foundation that rests on or in the ground or on a building's roof. All feed lines shall be installed within the shaft of the structure.

*Transmission Equipment* means equipment that facilitates transmission for any FCC- licensed or authorized wireless communication service, including, but not limited to, radio transceivers, antennas, coaxial or fiber-optic cable, and regular and backup power supply. The term includes equipment associated with



wireless communications services including, but not limited to, private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

*WCF* (see *Wireless Communication Facility*).

*Wireless communications* means any personal wireless service, which includes but is not limited to, cellular, personal communication services (PCS), specialized mobile radio (SMR), enhanced specialized mobile radio (ESMR), unlicensed spectrum services utilizing devices described in Part 15 of the FCC's regulations (e.g., wireless internet services and paging).

*Wireless communication facility (WCF)* means any staffed or unstaffed location for the transmission and/or reception of radio frequency signals, or other personal wireless communications, as defined in the Telecommunications Act of 1996, and usually consisting of an antenna or antenna array, transmission cables, feed lines, equipment cabinets, towers, cabling, antenna brackets, and other such equipment. The following shall be deemed a wireless communication facility: new, replacement, or existing towers, government-owned towers, modified towers, collocation on existing towers or base stations, attached concealed and non-concealed antenna, dual purpose facilities, DAS, small cell, concealed towers, and non-concealed towers, so long as those facilities are used in the provision of personal wireless services as that term is defined in the Telecommunications Act.

*Wireless Master Plan* means the Wireless Telecommunications Master Plan developed and adopted by the City, as amended from time to time, to enforce applicable development standards, land development regulations, state law and federal law related to the deployment of wireless telecommunications infrastructure.

Sec. 4.20.03. - Applicability.

A. Except as provided in section 4.20.04, the following shall apply to the development activities including, but not limited to, installation, construction or modification of the following wireless communications facilities:

- (1) Existing towers.
- (2) Proposed towers.
- (3) Public towers.
- (4) Replacement of existing towers.
- (5) Collocation on towers and base stations.
- (6) Attached WCF.
- (7) Concealed WCF.

B. These regulations are subject to state and federal law limitations.

Sec. 4.20.04. - Exempt installations.

The following uses are exempt from the provisions of this section notwithstanding any other provision of the City's land development regulations, but are subject to all applicable building code compliance and building permit reviews:

- (1) Non-commercial, amateur radio antennas as provided for in Section 125.561, Florida Statutes.

- (2) Satellite earth stations that are one meter (39.37 inches) or less in diameter in all residential districts and two meters or less in all other zoning districts and which are not greater than 20 feet above grade in residential districts and 35 feet above grade in all other zoning districts.
- (3) A government-owned WCF, upon the declaration of a state of emergency by federal, state, or local government, and a written determination of public necessity by the City; except that such WCF must comply with all federal and state requirements. This exemption shall terminate upon the state of emergency ending.
- (4) A government-owned WCF erected for the purposes of installing antenna(s) and ancillary equipment necessary to provide communications for public health and safety.
- (5) A temporary, commercial WCF, upon the declaration of a state of emergency by federal, state or local government, or determination of public necessity by the City, and approval by the City; except that such WCF must comply with all federal and state requirements. The exemption may be permitted by the City to continue to three months after the duration of the state of emergency.
- (6) A temporary, commercial WCF for the purposes of providing coverage of a special event such as news coverage or sporting event, subject to approved by the City, except that such WCF must comply with all federal and state requirements. Said WCF may be exempt for a period of up to one week after the duration of the special event.
- (7) Antenna support structures, antennas, and/or antenna arrays for AM/FM/TV/HDTV broadcasting transmission facilities that are licensed by the FCC shall be regulated in accordance with federal, state and other applicable regulations.

#### Sec. 4.20.05. – Wireless Master Plan

- A. The City has adopted a Wireless Master Plan by Resolution of the City Council. The Wireless Master Plan identifies existing or proposed City or publicly owned sites for wireless communication infrastructure and service.
- B. Design standards for proposed towers in the Wireless Master Plan shall be consistent with this Ordinance and the Wireless Master Plan but may be further detailed and addressed through the required lease terms for use of any public property.
- C. The Wireless Master Plan was adopted by the City Council by Resolution No. \_\_\_\_\_, as may be amended by City Council resolution hereafter. And, by this reference, the Wireless Master Plan is incorporated herein.
- D. The Land Use Administrator or designee may waive application requirements in Section 4.20.09 for sites within the Wireless Master Plan. The applicable requirements are listed in Section 4.20.09.
- E. If an applicant receives a permit to develop a site on City-owned property, the permit shall not become effective until the applicant and the City have executed a written agreement or lease setting forth the applicable terms and provisions.

- F. No permit granted under this section shall convey an exclusive right, privilege, permit, or franchise to occupy or use the publicly owned sites of the jurisdiction for delivery of wireless communications services or any other purpose.
- G. No permit granted under this section shall convey any right, title or interest in the public lands, but shall be deemed a permit only to use and occupy the public lands for the limited purposes and term stated in the agreement between the lessor and lessee.
- H. Sites located within the Wireless Master Plan may utilize a standard landscape plan, approved by the Land Use Administrator or designee.
- I. Sites within the Wireless Master Plan may utilize alternative compliance standards to access a WCF site, if approved by the Land Use Administrator or designee.

Sec. 4.20.06. – Preferred siting locations.

- A. All new WCFs and any supporting structures, except for those proposed within the public rights-of-way, shall generally adhere to the following siting preferences, in order of preference:
  - (1) City-owned property identified in the Wireless Master Plan;
  - (2) Other public property identified in the Wireless Master Plan;
  - (3) Other City owned or public property not identified in the Wireless Master Plan;
  - (4) Privately owned property not identified in the Wireless Master Plan.
- B. If the proposed location for the new WCF is not consistent with the preferred hierarchy and the Wireless Master Plan, the applicant must file relevant information as indicated in Section 4.20.09 with the siting application including, at minimum, the following:
  - (1) An affidavit by a radio frequency engineer demonstrating that despite diligent efforts to adhere to the geographic preferences established in the wireless master plan, wireless master plan options are not technically infeasible, practical or justified given the location of the proposed WCF;
  - (2) An affidavit demonstrating that the proposed site will not adversely affect existing or future single-family uses or environmentally sensitive areas and is not contrary to the City's Comprehensive Plan and Unified Land Development Code; and
  - (3) The existing land uses of the subject and surrounding properties within 300 feet of the proposed site.
- C. This section shall not be interpreted to require applicants to locate on publicly-owned sites when lease negotiation processes are prohibitively lengthy or expensive relative to those of the private sector as determined by the Land Use Administrator or designee, based upon competent substantial evidence. The applicant is considered justified in selecting a lower-ranked privately-owned property option if the government entity fails to approve a memorandum of agreement or letter of intent to lease a specified publicly-owned site within 90 days of the application date or if it is demonstrated that the proposed lease rate for the specified public-owned site significantly exceeds the market rate for comparable privately-owned sites.

Sec. 4.20.07. - Permitted uses.

A. The placement, maintenance or modification of WCFs shall be permitted only in accordance with the wireless communication permit, and the land development requirements of this Code. The placement or maintenance of wireless communication facilities in the public rights-of-way shall comply with the regulations of Chapter 42 of the Code of Ordinances:

B. Applicable permits.

All applications shall meet the review timeframes as shown in Section 4.20.10.

(1) Level I wireless communication facility permit. All applicable non-exempt applications to place, maintain, modify, or collocate wireless communications facilities, not subject to special exception use approval, shall be subject to administrative review and approval by the Land Use Administrator or designee, with no public hearing requirement.

(2) Level II wireless communication facility permit. All applicable non-exempt applications to place, maintain, or substantially change wireless communications facilities that do not qualify for an administrative permit shall be subject to the special exception approval process set forth in Section 2.07 of the Land Development Code, except that the application review and approval timeframes set forth in Section 4.20.10 shall apply. New towers proposed in non-master planned sites shall require Level II permits. All other installations only require Level 1 permits.

(3) Communications Rights-of-Way Permit. All non-exempt applications to place, maintain, modify, or collocate wireless communications facilities within the public rights-of-way shall be subject to the review and approval requirements set forth in Chapter 42, Code of Ordinances, and the applicable land development regulations set forth herein. Wireless communication facilities, other than small wireless facilities and micro wireless facilities, are prohibited within the public rights-of-way.

(4) Eligible facilities requests. Any request for modification of an existing tower or base station involving collocation of new transmission equipment; removal of transmission equipment; or replacement of transmission equipment that does not substantially change the physical dimensions of such tower or base station shall be reviewed and processed in accordance with the provisions set forth in Section 4.20.12.

C. Expedited collocation applications.

(1) Expedited collocation applications for antenna on towers. In accordance with Section 365.172, F.S., collocation of antenna on towers, including nonconforming towers, are subject only to building-permit review, which may include a review for compliance with this section, if the applicants meet the following requirements:

a. The collocation does not increase the height of the tower to which the antennae are to be attached, measured to the highest point of any part of the tower or any existing antenna attached to the tower; and

b. The collocation does not increase the ground space area, commonly known as the compound, approved in the site plan for equipment facilities and ancillary facilities, except as allowed under this section; and

c. The collocation consists of antennas, equipment facilities, and ancillary facilities that are of a design and configuration consistent with all applicable regulations, restrictions, or conditions, if any, applied to the initial antennas placed on the tower and to its accompanying equipment facilities and ancillary facilities and, if applicable, applied to the tower supporting the antennas. Such regulations may include the design and aesthetic requirements but not procedural requirements, other than those authorized by this subsection, of the applicable land development code in effect at the time the initial antenna's placement was approved.

Such collocations shall not be subject to the design or placement requirements of the land development code in effect at the time of the collocation that are more restrictive than those in effect at the time of the initial antenna placement approval, to any other portion of the land development code, or to public hearing review. Such collocation applications shall be decided by the Land Use Administrator or designee.

(2) Expedited collocation applications for antenna on base stations. In accordance with Section 365.172, F.S., except for an historic building, structure, site, object, or district, the following collocation applications on all other existing base stations shall be subject to no more than administrative review for compliance with this section and building permit standards if they meet the following requirements:

a. The collocation does not increase the height;

b. The collocation does not increase the existing ground space area, otherwise known as the compound, if any, approved in the site plan for the equipment facility and ancillary facilities.

c. The collocation consists of antennas, equipment facility and ancillary facilities that are of a design and configuration consistent with any applicable structural or aesthetic design requirements and any requirements for location on the structure in effect at the time of approval of the structure, but not prohibitions or restrictions on the placement of additional collocations on the existing structure or procedural requirements, other than those authorized by this subsection at the time of the collocation application; and

d. The collocation consists of antennas, equipment facility and ancillary facilities that are of a design and configuration consistent with all applicable restrictions or conditions, if any, that do not conflict with subsection (c), and were applied to the initial antennas placed on the structure and to its accompanying equipment facility and ancillary facilities and, if applicable, applied to the structure supporting the antennas.

(3) If only a portion of the collocation does not meet the requirements of any of the above subsections, such as an increase in the height or a proposal to expand the ground space approved in the site plan for the equipment facility by more than 400 square feet or 50 percent, where all other portions of the collocation meet the requirements of this subsection, that portion of the collocation only may be reviewed as set forth in subsection (6) below. A

collocation proposal under this subsection that increases the ground space area approved in the original site plan, for equipment facilities and ancillary facilities, by no more than a cumulative amount of 400 square feet or 50 percent of the original compound size, whichever is greater, shall require no more than administrative review for compliance with the City's regulations; including, but not limited to, land development code and building permit review; provided, however, that any collocation proposal that increases the original compound size more than such greater cumulative amount shall be reviewed as if it were a new communications facility.

- (4) Any existing tower, including a nonconforming tower, may be structurally modified to permit collocation, or may be replaced through no more than administrative review and building permit review, and is not subject to public hearing review, if the overall height of the tower is not increased and, if the replacement tower is a monopole tower, or if the pre-existing tower is a stealth tower, the replacement tower is a similar stealth tower.
- (5) The owner of the existing tower on which the proposed antennas are to be collocated shall remain responsible for compliance with any applicable condition or requirement of a permit or agreement, or any applicable condition or requirement of the land development code to which the pre-existing tower must comply, including any aesthetic requirements, provided the condition or requirement is consistent with this subsection.
- (6) Colocations or portions of colocations that are not exempt from this section and do not fall under the provisions of subsections 4.20.07.C(1) through (4), shall be reviewed through a full permitted use review. Those located on historic structures or in historic districts, shall be reviewed through the review processes for historic structures or districts indicated in the LDC.

#### Sec. 4.20.08. - Development standards.

##### A. *General:*

(1) All development standards and land development code regulations relating to the property upon which the WCF is located shall apply. Additionally, where permitted as provided in Section 4.20.07, the following development standards apply to all attached collocations and all new, modified, or combined WCF installations. Where any environmentally sensitive lands, historic or scenic overlay districts or corridor plans also apply, the most restrictive standards shall govern.

(2) Cabinets shall be provided within the principal building, behind a screen on a rooftop or on the ground within the fenced-in and screened equipment compound. This is not required if out of the public view.

(3) All equipment compounds shall be enclosed with a wood/brick/masonry fence or otherwise secured and screened with opaque landscaping. Fencing shall be subject to the requirements as outlined in the LDC.

(4) WCF equipment compounds shall be landscaped as required in Chapter 11 of the LDC. Wireless Master Plan sites may utilize a standard alternative landscape plan approved by the Land Use Administrator or designee.

(5) Attaching commercial messages for off-site and on-site advertising to a WCF is prohibited and unlawful. The placement of a religious symbol as part of the concealment of a WCF shall not be considered prohibited commercial messages or signage. The only signage that is permitted upon a tower, equipment cabinet, or fence shall be informational, and for the purpose of identifying the tower (such as ASR registration number), as well as the party responsible for the operation and maintenance of the facility, its current address and telephone number, security or safety signs, and property manager signs (if applicable). On permitted signs which are not located on a tower, cabinet or fence, a WCF may be concealed inside such signage, provided that all applicable standards for both the signage and the concealed WCF are met.

(6) Lighting on WCFs, if required by the FAA, shall not exceed the FAA minimum standards. Any lighting required by the FAA must be of the minimum intensity and number of flashes per minute (i.e., the longest duration between flashes) allowable by the FAA to minimize the potential attraction to migratory birds. Dual lighting standards are required and strobe light standards are prohibited unless required by the FAA. The lights shall be oriented so as not to project directly onto surrounding residential property, consistent with FAA requirements. Any security lighting for on-ground facilities and equipment shall be in compliance with the LDC.

(7) Each WCF and its equipment compounds shall be constructed and maintained in conformance with all applicable building code requirements.

(8) Equipment compounds shall not be used for the storage of any excess equipment or hazardous waste (e.g., discarded batteries). It is prohibited and unlawful to allow an outdoor storage yard in a WCF equipment compound or to use the equipment compound as habitable space.

(9) The WCF shall comply with all applicable federal, state and local regulations.

(10) The WCF applicant shall comply with all applicable American National Standards Institute (ANSI) standards as adopted by the FCC.

(11) Each WCF shall be designed to ensure that no sound emissions from machinery, alarms, bells, buzzers, or similar noise making devices are audible beyond the perimeter of the equipment compound and shall comply with the City of Palm Coast Code of Ordinances. **Emergency backup power generators are allowed to operate in short term maintenance durations, and during power outages.**

(12) Building permits. A building permit shall be required for the construction, modification, and collocation of all WCFs, including any accessory structures or equipment, as provided in Section 4.20.07 above. **A compliance letter from the State Historic Preservation Office of Cultural and Historic Programs of the Florida Department of State is a condition of receiving a building permit.**

(13) The WCF and its equipment compound shall be subject to the setbacks of the underlying zoning district. Antennas may extend a maximum of 30 inches into the setback. However, no antenna or portion of any structure shall extend into any easement.

**B. Attached WCFs:**

(1) Attached WCF's may be permitted in all zoning districts. The top of the attached WCF shall not be more than 20 feet above the existing or proposed building or structure.

(2) Feed lines and antennas shall be designed to architecturally match the facade, roof, wall, or structure on which they are affixed in order to blend with the existing structural design, color, and texture and in order to provide the least visually obtrusive profile.

C. *Freestanding WCFs:*

(1) All new freestanding WCFs shall meet minimum lot size standards of the underlying zoning district and are subject to the LDC.

(2) New freestanding towers shall be configured and located in a manner that shall minimize adverse effects including, but not limited to, visual impacts on the landscape and adjacent properties. New freestanding WCFs shall be designed to match adjacent structures and landscapes with specific design considerations such as architectural design, height, scale, color and texture, and shall have the least visually obtrusive profile.

(3) Grading shall be minimized and limited only to the area necessary for the new WCF as approved by the Land Use Administrator or designee.

(4) All support structures shall be certified to comply with the safety standards contained in the Electronics Industries Association/Telecommunications Industries Association (EIA/TIA) Document 222-F, Structural Standards For Steel Antenna Towers and Supporting Structures, as amended, by a Florida professional engineer.

(5) Freestanding towers may only be permitted as monopole towers. Guyed and lattice structures are prohibited, unless the applicant demonstrates to the City by clear and convincing evidence that monopole towers are not feasible to accommodate the intended uses. Freestanding monopoles are prohibited from single-family or multi-family residential districts unless the applicant can conclusively demonstrate to the satisfaction of the City that it cannot reasonably provide its service to the residential zone from outside of the district. The City shall cooperate to determine an appropriate location for the freestanding tower of an appropriate design within the residential district. The applicant shall reimburse the City for all reasonable costs incurred by the City for this cooperative determination.

(6) The height of a new monopole tower shall not exceed the heights provided in the table below:

<b>Freestanding Non-Wireless Master Plan Sites</b>	
<b>Zone</b>	<b>Maximum Height WCF</b>
Single family Residential	Not permitted unless applicant can conclusively demonstrate to the satisfaction of the City that it cannot reasonably provide its service to the residential zone from outside of the district.
Multifamily Residential	Not permitted unless applicant can conclusively demonstrate to the satisfaction of the City that it cannot reasonably provide its service to the residential zone from outside of the



	district.
MPD	As determined by the MPD ordinance, unless within a Wireless Master Plan
All other districts	Up to 150 feet.
<b>Wireless Master Plan Sites</b>	
All districts	Up to 150 feet.

(7) In calculating the height limit, above ground foundation shall be included, but lightning rods or lights required by the FAA that do not provide any support for antennas shall be excluded. If the freestanding WCF is located within the Wireless Master Plan, the maximum height may be up to 150 feet.

(8) A freestanding monopole and its equipment compound shall be subject to the land development code regulations applicable to the underlying zoning district. The minimum setback distance for a freestanding tower shall be 150 feet from any residentially zoned or platted property. Freestanding monopoles are not allowed in residentially zoned or platted property. In the event of any conflict between this section and the Land Development Code, this section shall control.

(9) New towers shall maintain a galvanized gray finish or other approved contextual or compatible color and provide the least visually obtrusive profile, except as required by Federal regulations. The level of required concealment for antenna placement shall be determined based upon the visibility and location of the proposed tower and the network objectives of the desired coverage area.

(10) All new or modified freestanding WCFs shall be engineered to maximize colocation.

D. *Attached Collocation or Combined WCFs:*

(1) An attached collocation or combined WCF shall not increase the height of an existing tower or base station by more than 20 feet, unless required by Federal law. The maximum total height shall be 150 feet.

(2) The City may require new antenna to be flush-mounted or concealed on a case by case basis, if it is determined that a practical visual and aesthetic benefit can be achieved if in the public view. If the applicant demonstrates through RF propagation analysis that flush-mounted or concealed antennas will not meet the network objectives of the desired coverage area, this requirement shall not apply. **This provision does not apply to Wireless Master Plan Sites.**

Sec. 4.20.09. - Submittal requirements for Level I and Level II permits.

A. Application form. Requests for Level I and Level II wireless communication permits shall be made only on application forms approved by the City. Applications shall contain all information required by this land development code and other City regulations, and shall be reviewed for completeness.

B. Application materials. In addition to the application materials specified in this code for the appropriate type of review, all applications shall provide sufficient materials (plans, graphics, narratives, or expert statements) to demonstrate compliance with all applicable requirements of this section.

(1) Level I and Level II applications shall contain the following:

- a. Application.
- b. A site plan addressing the development standards of the LDC. If applicable, an application meeting the special exception requirements of Section 2.07 of the LDC shall be submitted.
- c. An affidavit by a RF engineer demonstrating compliance with Section 4.20.05. If a non-master plan site is proposed, the affidavit must address why master plan sites are not technically feasible, practical or justified given the location of the proposed WCF communications facility.
- d. FCC documentation including a copy of FCC license submittal or registration, and FCC license or registration
- e. Proposed maximum height of the WCF including, but not limited to, individual measurement of the base, the tower or base station, and lightning rod.
- f. Photo-simulated post-construction renderings of the completed proposed tower, base station, equipment cabinets, and ancillary structures from locations to be determined during a mandatory pre-application conference. The renderings shall include proposed exterior paint and stain samples for any items to be painted or stained, exterior building material and roof samples. The applicant shall provide simulated photographic evidence of the proposed WCFs appearance from a maximum of four vantage points chosen by the City with consultation with the applicant.
- g. If the proposed WCF is subject to FAA regulation, then, prior to issuance of a building permit, evidence of compliance with applicable FAA requirements under 14 C.F.R. § 77 et seq., as amended, together with any FAA "no hazard" determinations concerning the WCF (if applicable) shall be timely provided by the applicant to the City.
- h. In order to facilitate the regulation, placement, and construction of WCFs and to ensure that all parties comply with the rules, regulations and applicable guidelines of the FCC, each owner of a WCF or applicant for a WCF shall provide an affirmative statement that it will comply with all applicable federal, state and local statutory and regulatory requirements.
- i. For applications for new towers or other freestanding WCFs, as necessary to determine that there is no other existing structure that could reasonably be used for the placement of the proposed antennas, or for applications for new WCFs or attached collocations that increase the height of an existing structure, as needed to determine if the proposed height is necessary to provide the carrier's designed service, materials detailing the locations of existing WCFs to which the proposed antenna will be candidate for placement, including, but not limited to, latitude and longitude of the proposed and existing antenna. This material is not required for Wireless Master Plan sites.
- j. For applications for new towers or other freestanding WCFs, as necessary to determine that there is no other existing structure that could reasonably be used for the placement of the proposed antennas, a map showing the designated search ring. This map is not required for Wireless Master Plan sites.

- k. With regard to attached colocations, attached and combined WCFs, the applicant shall also submit:
  - i. Certification furnished by a Florida registered professional engineer that the WCF has sufficient structural integrity to support the proposed antenna and feed lines in addition to all other equipment located or mounted on the structure.
  
- l. With regard to freestanding concealed or non-concealed WCFs, and modification of WCFs, for non-Wireless Master Plan sites only, the applicant shall also submit:
  - i. A report and supporting technical data demonstrating that all antenna attachments and colocations, including all potentially useable utility distribution poles or transmission towers and other elevated structures within the proposed geographic search ring, and alternative antenna configurations have been examined, and found unacceptable. The report shall include reasons that existing facilities such as utility distribution poles and transmission towers and other elevated structures are not acceptable alternatives to a new freestanding WCF. The report regarding the adequacy of alternative existing WCFs or the mitigation of existing WCFs to meet the applicant's need or the needs of service providers indicating that no existing WCF could accommodate the applicant's proposed WCF shall demonstrate any of the following:
    - a. No existing WCFs located within the geographic search ring meet the applicant's engineering requirements, and why.
    - b. Existing WCFs are not of sufficient height to reasonably meet the applicant's engineering requirements, and cannot be increased in height.
    - c. Existing WCFs do not have sufficient structural integrity to support the applicant's proposed WCFs and related equipment, and the existing WCF cannot be sufficiently improved.
    - d. Other limiting factors that render existing WCFs unsuitable.
  - ii. The applicant shall provide simulated photographic evidence of the proposed WCFs appearance from four vantage points chosen by the City with consultation with the applicant, including the facility types the applicant has considered and the impact on adjacent properties including, but not limited to:
    - a. Overall height.
    - b. Configuration.
    - c. Physical location.
    - d. Mass and scale.
    - e. Materials and color.
    - f. Illumination.
    - g. Architectural design.

This does not apply to Wireless Master Plan sites.

iii. If applicable, the applicant shall provide a statement as to the potential visual and aesthetic impacts of the proposed WCF on all adjacent properties assigned a residential land use designation or zoning district. This does not apply to Wireless Master Plan sites.

iv. A certification by a Florida professional engineer that the WCF has sufficient structural integrity to accommodate the required and a proposed number of colocations.

v. A certification by a Florida professional engineer specifying the design structural failure modes of the proposed WCF, if applicable.

vi. Identification of the proposed intended service providers of the WCF.

m. With regard to antenna element replacements.

i. Any repair or replacement of an existing antenna or antenna array with another of equal number that does not increase the number and/or size of transmission lines, and that is not readily discernibly different in size, type and appearance when viewed from ground level from surrounding properties, as reasonably determined by the City, and which will not alter the structural integrity of the support structure, is exempt from further review, provided that a notarized certification is submitted by a qualified technician stating that the replacement will not alter the structural integrity of the support structure and that any changes will not affect electrical specifications.

ii. For any repair or replacement of an existing antenna or antenna array on a WCF that changes the mechanical, structural or electrical specifications of the WCF, but does not increase the number and/or size of feed lines and does not increase the number and/or size of antenna elements to the existing WCF, the applicant must, prior to making such modifications, apply for a new building permit review for such requested changes, and, for structural changes to freestanding WCFs, shall provide, in addition to any other documentation necessary for building permit review, a stamped or sealed structural analysis of the existing freestanding WCF prepared by a Florida professional engineer indicating that the existing tower or base station as well as all existing and proposed appurtenances meets the City and Florida Building Code requirements (including, but not limited to, wind loading) for the tower or base station.

n. With regard to the replacement of or modification to an existing WCF, except a tower.

The replacement of or modification to a WCF, except a tower, that results in a WCF facility not readily discernibly different in size, type and appearance, when viewed from ground level from surrounding properties, and the replacement or modification of equipment that is not visible from surrounding properties, all as reasonably determined by the Land Use Administrator, are subject only to building permit review.

(2) Level II applications

a. A completed special exception approval application, and all items required pursuant to Section 2.07, including compliance with all applicable special exception requirements.

- C. Disclosure of ownership. A notarized affidavit from all owners having a legal, equitable, or beneficial ownership interest in the tower or base station, or privately owned real property upon which a facility is or will be located or collocated, granting permission to the applicant to locate upon such real property, or attach to the tower or base station being collocated upon or attached to.
- D. Submission of fee. All applications must be accompanied by the permit fee as established by resolution of the City Council.

Sec. 4.20.10. – Application Review Process.

- A. A pre-application conference is required. To minimize issues related to permit application, prior to submitting materials for a permit application, an applicant must request a pre-submittal meeting with the Land Use Administrator or designee. The City shall undertake efforts to accommodate an applicant's request for a pre-application conference within ten (10) business days of a request.
- B. Expert review. The City may require that all wireless communications permit applications be reviewed by a third-party consultant or expert at the expense of the applicant for compliance with the requirements set forth herein. No permit shall be issued to any applicant that has not fully reimbursed the City for the third-party review fees, which shall be limited to the specifically identified reasonable expenses incurred in the review.
- C. Application Review Timeframes: "shot clock". The City's action on proposals to place, maintain, modify, or collocate wireless communications facilities shall be subject to the applicable standards and time frames set out in Section 365.172, Florida Statutes, 47 U.S.C. § 1455 (a) and Orders issued by the FCC, as same may be amended from time to time. All Federal and State "shot clock" timeframe guidelines that apply to any particular permit are hereby recognized by the City, and the City will make all reasonable efforts to comply. Except for eligible facilities request applications reviewed in accordance with Section 4.20.12, the following procedures apply to installation of a new WCF or modification:

(1) Notification of completeness. The Land Use Administrator or designee shall notify the applicant within 20 business days after the date the application is submitted as to whether the application is, for administrative purposes only, properly completed and has been properly submitted in accordance with the requirements set forth above. However, such determination shall not be deemed as an approval of the application. Such notification shall indicate with specificity any deficiencies which, if cured, could make the application properly completed.

(2) Expedited collocation applications. The City shall grant or deny each properly completed expedited collocation application for collocation based on the application's compliance with this section, applicable provisions of the City Code and any other applicable regulations, and within the normal timeframe for a similar building permit review, but in no case later than 45 business days after the date the application is determined to be properly completed. This timeframe shall not apply to lease negotiations for collocation on City-owned property.

(3) All other applications. The City shall grant or deny each properly completed application for any other non-exempt WCF, including special exception approvals and collocations that do not qualify for an expedited collocation, based on the application's compliance with this section and any other applicable law, including but not limited to the City Code, and within the normal timeframe for a similar type of review, but in no case later than 90 business days after the date the City determines the

application is completed. This timeframe shall not apply to lease negotiations for wireless communications facilities on City-owned property. Collocations located on historic base stations, or within a historic district, shall be reviewed through the review processes for historic structures or districts indicated in the LDC.

(4) An application is deemed submitted or resubmitted on the date the application is received by the City. If the City does not notify the applicant in writing that the application is not completed in compliance with the City's regulations within 20 business days after the date the application is initially submitted or additional information resubmitted, the application is deemed, for administrative purposes only, to be properly completed and properly submitted. However, the determination shall not be deemed as an approval of the application. If the application is not completed in compliance with the City's regulations, the City shall so notify the applicant in writing indicating with specificity any deficiencies in the required documents or deficiencies in the content of the required documents which, if cured, would make the application properly completed. Upon resubmission of information to cure the stated deficiencies, the City shall notify the applicant, in writing, within the normal timeframes of review, but in no case longer than 20 business days after the additional information is submitted, of any remaining deficiencies that must be cured. However, if applicant does not cure the application deficiencies within 20 business days after receiving the notice of deficiencies, the application shall be considered withdrawn or closed unless an extension, due to reasonable circumstances, of the time to cure is requested by the applicant prior to the expiration of the 20-day period, and such extension is granted by the Land Use Administrator or designee.

(5) The timeframes specified above may be extended, but in no case longer than 90 calendar days for collocations, and 150 calendar days for new installations, and only to the extent that the application has not been granted or denied because the City's procedures generally applicable to all other similar types of applications require action by the City Council or Planning and Land Development Regulation Board, and such action has not taken place within the specified timeframes. Under such circumstances, the City Council or Planning and Land Development Regulation Board, as applicable, shall either grant or deny the application at its next regularly scheduled meeting, or, otherwise, the application shall be deemed automatically approved; accordingly, the Land Use Administrator or designee may by letter to the applicant extend the timeframe for a decision until the next available scheduled meeting date of the City Council or Planning and Land Development Regulation Board as to whether to grant or deny an application for a permit. To be effective, a waiver of the timeframes set forth herein must be voluntarily agreed to by the applicant and the City. The City may request, but not require, a waiver of the timeframes by the applicant, except that, with respect to a specific application, the City may require a one-time waiver in the case of a declared local, state, or federal emergency that directly affects the administration of all permitting activities of the City. Notwithstanding the foregoing, the City and an applicant may voluntarily agree to waive the timeframes set forth above.

- D. Appeals. Any person aggrieved by an administrative decision rendered by the Land Use Administrator regarding the provisions of this Section 4.20 may appeal such decision to the Planning and Land Development Regulation Board in accordance Section 2.16.01 of the LDC.

#### Sec. 4.20.11. - Interference with public safety communications.

- A. The City adopts a policy of requesting prior notification of activation or modification of WCF facilities as provided for in 47 C.F.R. §22.973 and 47 C.F.R. § 90.675 and in accordance with those provisions, WCF

providers shall notify the Land Use Administrator or designee prior to a new site activation or existing site modification and provide the information required by the federal regulations.

- B. Whenever the City has encountered radio frequency interference with its public safety communications equipment, and it believes that such interference has been or is being caused by one or more WCFs, the following steps shall be taken:

(1) The City shall provide notification to all WCF service providers operating within 5,000 feet of the public safety communications equipment at issue, in accordance with the procedures indicated in 47 C.F.R. § 22.972 and 47 C.F.R. § 90.674, using the website [www.PublicSafety800MHzInterference.com](http://www.PublicSafety800MHzInterference.com). Upon such notification, the owners shall use their best efforts to cooperate and coordinate with the City and among themselves to investigate and mitigate the interference, if any, utilizing the procedures set forth in 47 C.F.R. § 22.972 and 47 C.F.R. § 90.674 and following the applicable FCC adopted Best Practices Guide, as may be amended or revised by the FCC from time-to-time.

(2) If any WCF owner fails to cooperate with the City in complying with the owner's obligations under this section and if the FCC makes a determination of radio frequency interference with the City public safety communications equipment, an owner who fails to cooperate and/or the owner of the WCF which caused the interference, shall be responsible, upon FCC determination of radio frequency interference, for reimbursing the City for all reasonable costs associated with ascertaining and resolving the interference including, but not limited to, any engineering studies obtained by the City to determine the source of the interference. For the purposes of this subsection, failure to cooperate shall include failure to initiate any response or action as described in 47 C.F.R. § 22.972 and 47 C.F.R. § 90.674.

#### Sec. 4.20.12. – Eligible Facilities Requests.

- A. **Applicability and Intent.** This section implements Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 (“Spectrum Act”) as interpreted by the Federal Communications Commission’s (“FCC”) Acceleration of Broadband Deployment Report & Order dated October 21, 2014, which requires local governments to approve any eligible facilities request for modification of an existing tower or base station that does not result in a substantial change to the physical dimensions of such tower or base station. This section shall apply only to eligible facilities requests for an eligible support structure that is a legal conforming or legal nonconforming structure at the time a completed eligible facilities request is submitted to the City. To the extent that the nonconforming structures and use provisions of the City of Palm Coast LDCs would operate to prohibit or condition approval of an eligible facilities request otherwise allowed under this section, such provisions are superseded by this section. This subsection shall not apply to an eligible facilities request replacement of the existing tower or base station. This subsection shall also not apply where the WCF requested to be modified is located upon a City-owned structure, or upon non-right-of-way property which is either City-owned or City-leased.
- B. **Sole and Exclusive Procedure.** Except as may otherwise be provided in this section, and notwithstanding any other provisions in the City Code, the provisions of this section shall be the sole and exclusive procedure for review and approval of an eligible facilities request which the applicant asserts is subject to review under the Spectrum Act. To the extent that other provisions of the City Code establish a parallel process for review and approval of a project application for a proposed eligible facilities request, the provisions of this section shall control. In the event that an application for a project approval includes a proposal to modify an eligible support structure, and the applicant does not assert in the application

that the proposal is subject to review under Section 6409 of the Spectrum Act, such proposal shall not be entitled to review under this section and may be subject to review under other applicable provisions of the City Code.

- C. **Application Requirements.** No eligible facilities request shall be deemed complete unless it is in writing, accompanied by the application fee, includes the required submittals, and is attested to by the authorized person submitting the application on behalf of the applicant. The application shall be submitted on a form prepared by the City. The applicant shall be obligated to demonstrate conclusively that the proposed modification satisfies the standards set forth herein and that the modification shall meet all applicable building codes.
- D. **Review of Application.** The City shall review an eligible facilities request application to determine if the proposed modification is subject to this section, and if so, if the proposed modification will result in a substantial change to the physical dimensions of an eligible support structure.
- E. **Timeframe for Review.** Within forty-five (45) calendar days of the date on which an applicant submits a request seeking approval under this subsection, the City shall approve, and may not deny, an eligible facilities request, unless it determines that the application is not covered by this section or proposes a substantial change to the physical dimensions of the eligible support structure.
- F. **Tolling of Timeframe for Review.** The 45-day period begins to run when the application is filed with the Land Use Administrator or designee in person during the City's regular business hours, and may be tolled only by mutual agreement, or in cases where the City determines that the application is incomplete.
  - (1) To toll the time frame for incompleteness, the City must provide written notice to the applicant within thirty (30) calendar days of receipt of the application, clearly and specifically delineating all missing documents or information.
  - (2) The time frame for review begins running again when the applicant makes a supplemental submission in response to the City's notice of incompleteness.
  - (3) Following a supplemental submission, the City shall have ten (10) calendar days to notify the applicant that the supplemental submission did not provide the information identified in the original notice delineating missing information. The time frame is tolled in the case of second or subsequent notices pursuant to the same procedure used for the first notice of incompleteness. Except as may be otherwise agreed to by the applicant and the City, second or subsequent notices of incompleteness may not specify missing documents or information that were not delineated in the original notice of incompleteness.
  - (4) Notices of incompleteness from the City shall be deemed received by the applicant upon the earlier of personal service upon the applicant, three days from deposit of the notice in the U.S. Mail, postage prepaid, to the applicant, or by electronic mail if the applicant has agreed to receive notices in such a manner.
  - (5) If after submittal of the application the applicant modifies the eligible facilities request, the modified application shall be considered a new application subject to commencement of a new application review period.
- G. **Approval or Denial.** An eligible facilities request shall be approved, and an eligible facilities permit issued, upon determination by the City that the proposed modification is subject to this section and that it does not substantially change the physical dimensions of an eligible support structure. An eligible facilities



request shall be denied upon determination by the City that the proposed modification is not subject to this section or will substantially change the physical dimensions of an eligible support structure.

- H. Denial. A denial of an eligible facilities request shall be in writing and shall set forth the reasons for the denial.
- I. Remedies. Applicant and City retain any and all remedies that are available at law or in equity and any action challenging a denial of an application or notice of a deemed approved remedy, may be brought in a court of competent jurisdiction within thirty (30) days following the date of the denial or following the date of notification of the deemed approved remedy.
- J. Applicable Code Requirements. Nothing in this section shall relieve the applicant from compliance with applicable building, structural, electrical, and safety codes and with other laws codifying objective standards reasonably related to health and safety. Any approved eligible facilities request may be conditioned upon compliance with such codes and other laws.
- K. Expiration of Approval. An approved eligible facilities request shall be valid for a term of 180 days from the date of approval or the date the application is deemed approved.
- L. Not Covered as an Eligible Facilities Request. Should the City determine that an applicant's request is not covered by Section 6409(a) of the Spectrum Act, the presumptively reasonable time frame under [47 U.S.C. § 332\(c\)\(7\)](#), as prescribed by the FCC's Shot Clock order, will begin to run from the issuance of the City's decision that the application is not a covered request. To the extent such information is necessary, the City may request additional information from the applicant to evaluate the application under [47 U.S.C. § 332\(c\)\(7\)](#), pursuant to the limitations applicable to other reviews under that statute.
- M. Failure to Act. In the event the City fails to approve or deny a request under this section within the timeframe for review, accounting for any tolling, the request shall be deemed granted. The application deemed granted does not become effective until the applicant notifies the City in writing after the review period has expired, accounting for any tolling, that the application has been deemed granted.

#### Sec. 4.20.13. – Abandonment.

Any WCF and equipment compound that is not operated for a continuous period of 210 days shall be considered abandoned. The Land Use Administrator may require removal of the WCF and equipment compound under the following circumstances, which are deemed detrimental to the health, safety and welfare interests of the City:

- (1) The WCF has not been operated for a continuous period of 210 days, except for periods caused by force majeure, in which case, repair or removal shall commence within 90 days or within such other reasonable time approved by the Land Use Administrator;
- (2) The WCF creates a public health or safety hazard, which shall be deemed a nuisance per se; or
- (3) The WCF has been located, constructed, or modified without obtaining all permits and approvals required by law, or located, constructed, or modified in a manner inconsistent with applicable permit requirements and state or federal law.

If the Land Use Administrator makes such a determination the owner of such WCF and equipment compound shall remove the same, at the owner's expense, within 90 days of receipt of notice from the City notifying the

owner of such abandonment. An owner may apply to extend the time for removal or reactivation by submitting an application stating the reason for such extension. The City may extend the time for removal or reactivation up to 90 days upon a showing of good cause. If the WCF or equipment compound is not removed in accordance with the requirements of this section, the City may give notice that it will contract for removal within 90 days following written notice to the owner. Thereafter, the City may cause removal of the WCF and equipment compound with all costs being borne by the owner. The City may record a lien against the property in the amount of all costs and expenses of the City. Upon removal of the WCF, the equipment compound and the foundations, including two feet below ground level, the development area shall be returned to its natural state and topography and vegetated consistent with the natural surroundings or consistent with the current use of the land at the time of removal. The cost of rehabilitation shall be borne by the owner. Except as provided herein, the abandonment of WCFs within public rights-of-way shall be managed in accordance with the procedures set forth in Section 42-123, City Code of Ordinances. Any special exception approval for a WCF shall automatically expire 210 days from the date of abandonment without reactivation, or upon completion of dismantling and removal, whichever is first, or pursuant to the notice required by Section 42-123 of the City Code of Ordinances.

Sec. 4.20.14. - Code enforcement.

- A. The City may enforce the provisions of this section in accordance with the provisions of applicable state law and pursue any and all available legal remedies.
- B. The City shall engage in a program of periodic inspections to ensure continuing adherence to the standards of this section and to ensure that WCFs are being appropriately maintained.

Sec. 4.20.15. – Compliance with state and federal regulations; preemption.

In implementing this section and the provisions set forth herein, the City shall comply with applicable state and federal regulations, and the provisions of this section shall be given force to the maximum amount and greatest extent permissible under state and federal law. Except as authorized pursuant to state and federal law, in the event of any conflict between the terms of this section and state or federal law, state and federal law shall control. In the event any provision of this section is specifically preempted, or judicially determined to be preempted by state or federal law, then the preempted provision shall automatically be deemed null and void and the superseding provision of state or federal law shall prevail.

# City of Palm Coast, Florida Agenda Item

Agenda Date: 02/06/2018

<p><b>Department</b> PLANNING <b>Item Key</b></p>	<p><b>Amount</b> <b>Account</b> <b>#</b></p>
<p><b>Subject</b> ORDINANCE 2018-XX AMENDING CHAPTER 42 ARTICLE IV COMMUNICATION RIGHTS-OF-WAY</p>	
<p><b>Background :</b>  <b><u>UPDATE FROM THE JANUARY 9, 2018 WORKSHOP</u></b>            This item was heard for first reading and approved by City Council at their January 16 Business Meeting. There were no changes suggested to this item.</p> <p><b><u>UPDATE FROM THE JANUARY 9, 2018 WORKSHOP</u></b>            This item was heard by City Council at their January 9, 2018 Workshop. There were no changes suggested to this item. However, there were some final legal revisions made to the Ordinance which are highlighted in yellow.</p> <p><b><u>ORIGINAL BACKGROUND FROM THE JANUARY 9, 2018 WORKSHOP</u></b>            The Palm Coast City Council has made improved wireless infrastructure and service a high priority. This direction stems from an increasing recognition that wireless connectivity is becoming an increasingly essential need for residents, businesses, and visitors, both locally and nationwide.</p> <p>Overall trends indicate that Americans have a decreased household reliance on landlines; only 49% of Americans still use landlines. In addition, today's subscribers have increased their data usage in ways previously unimagined. Further, recent storms have shown us the importance of maintaining public service emergency communications and infrastructure. Lastly, an ever-changing regulatory climate and an increased tolerance toward wireless communication facilities warrant a review of the City's current policies.</p> <p>The project under consideration consists of three components: a revised Wireless Communication Facilities Ordinance in the City's Land Development Code, proposed amendments to the City's Right of Way (ROW) Ordinance to regulate small cell facilities in the ROW, and a proposed Wireless Master Plan.</p> <p>There have been significant changes to wireless technologies and federal legislation since the adoption of the existing City Ordinances in 2005. While the City currently regulates Wireless Communication Facilities in two code locations, this item amends Chapter 42 Article IV Communication Rights-of-Way. In a separate agenda item, staff has drafted a second ordinance to repeal Chapter 54 "Wireless Telecommunications" of the Code of Ordinances and amend Section 4-20, "Wireless Communication Facilities" of Chapter 4, "Conditions for limited specific uses and activities" in the City's Unified Land Development Code.</p> <p>In 2017, the Florida Legislature passed, and Governor Scott signed, the "Advanced Wireless Infrastructure Deployment Act." The Act places certain limitations on local government authority to regulate the collocation of small wireless facilities within the public rights-of-way. The</p>	

proposed Communication Rights-of-Way Ordinance repeals and replaces Article IV of Chapter 42 Code of Ordinances to meet applicable State and Federal Law including the Advanced Wireless Infrastructure Deployment Act within the limitations on local government authority.

In essence, the proposed Ordinance will allow applicants to obtain a newly- created Communications Rights-of-Way permit from the City. The permit process established in the Ordinance establishes minimum regulatory requirements for these type of facilities consistent with State law. These requirements include insurance provisions, bonding requirements, as well as an application process. Such provisions are important since the new State law allows applicants to apply for up to 30 pole locations on one permit.

**Recommended Action :**

Adopt Ordinance 2018-XX AMENDING CHAPTER 42, ARTICLE IV, COMMUNICATION RIGHTS-OF-WAY

**ORDINANCE 2018-\_\_\_\_**  
**AMENDING CHAPTER 42**  
**OF THE CODE OF ORDINANCES**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA AMENDING SECTION 42-38, “EXCEPTIONS” OF ARTICLE II, “RIGHT-OF-WAY UTILIZATION”, OF CHAPTER 42, “STREETS, ROADS, BRIDGES, AND OTHER PUBLIC PLACES” TO PROVIDE EXCEPTION FOR WIRELESS FACILITIES PERMITTED IN ACCORDANCE WITH THE COMMUNICATIONS RIGHTS-OF-WAY ORDINANCE; AMENDING ARTICLE IV, “COMMUNICATIONS RIGHTS-OF-WAY” OF CHAPTER 42, “STREETS, ROADS, BRIDGES, AND OTHER PUBLIC PLACES”, OF THE CODE OF ORDINANCES OF THE CITY OF PALM COAST, TO AMEND AND UPDATE THE REGULATIONS REGARDING COMMUNICATIONS FACILITIES IN PUBLIC RIGHTS-OF-WAY CONSISTENT WITH APPLICABLE STATE AND FEDERAL LAW INCLUDING THE ADVANCED WIRELESS INFRASTRUCTURE DEPLOYMENT ACT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CODIFICATION; PROVIDING FOR CONFLICTS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Florida Legislature has adopted, and on June 23, 2017, the Governor signed into law, effective July 1, 2017, the Advanced Wireless Infrastructure Deployment Act (the “Act”) codified at Section 337.401(7), Florida Statutes, which places certain limitations on local government authority to regulate the collocation of small wireless facilities within the public rights-of-way; and

**WHEREAS**, the Act authorizes cities to adopt objective design standards that may require small wireless facilities and wireless support structures in the public rights-of-way to meet reasonable location context, color, stealth, and concealment requirements, and spacing and location requirements for ground-mounted equipment; and

**WHEREAS**, the Act authorizes cities to adopt by ordinance reasonable and non-discriminatory provisions for insurance coverage, indemnification, performance bonds, security funds, force majeure, abandonment, municipal liability, municipal warranties, and other requirements with respect to wireless facilities in the public rights-of-way; and

**WHEREAS**, the Act largely preserves local government authority to adopt “rules or regulations governing the placement of utility poles in the public rights-of-way,” subject to certain limitations; and

**WHEREAS**, the Act further provides specific terms and conditions under which a local government must process and issue permits for collocation of small wireless facilities; and

**WHEREAS**, passage of the Act requires amendments to the City Code of Ordinances to implement the provisions of the Act and to ensure consistency therewith; and

**WHEREAS**, the City Council of the City of Palm Coast (“City Council”) finds that the public rights-of-way are valuable public properties, acquired and maintained by the City at great expense to its taxpayers; and

**WHEREAS**, it is the City’s intent to exercise its authority over communications services providers, communications facility providers and pass-through providers’ placement and maintenance of facilities within its public rights-of-way; and

**WHEREAS**, to promote the public health, safety, aesthetics, and general welfare, the City has a substantial interest in maintaining and protecting its public rights-of-way in a reasonable, non-discriminatory, and competitively neutral manner, and requiring that providers seeking permits to conduct any type of excavation, construction or other activity do so in a safe, expeditious, and professional manner in accordance with applicable state and federal law; and

**WHEREAS**, the City Council hereby finds this Ordinance to be in the best interest of the public health, safety, and welfare of the public and citizens of the City of Palm Coast, Florida, while complying with the Act and all other state and federal laws and regulations governing communications facilities; and

**WHEREAS**, words with double underlined type shall constitute additions to the original text and ~~strike through~~ type shall constitute deletions to the original text, and asterisks (\* \* \*)

indicate that text shall remain unchanged from the language existing prior to adoption of this Ordinance.

**NOW, THEREFORE, IT IS HEREBY ORDAINED BY THE CITY OF PALM COAST, FLORIDA:**

**SECTION 1. LEGISLATIVE AND ADMINISTRATIVE FINDINGS.** The above recitals (whereas clauses) are hereby adopted as the legislative and administrative findings of the City Council.

**SECTION 2. AMENDMENT OF SECTION 42-38, “EXCEPTIONS” OF ARTICLE II, “RIGHT-OF-WAY UTILIZATION” CHAPTER 42, “STREETS, ROADS, BRIDGES, AND OTHER PUBLIC PLACES”.** That Section 42-38 “Exceptions” of Article II, “Right-of-Way Utilization” of Chapter 42, “Streets, Roads, Bridges, and Other Public Places” of the City Code of Ordinances, is hereby amended as follows:

**Section 42-38. Exceptions.**

\* \* \*

(d) Emergency repair. Emergency repair as defined in section 42-34(f) above, may be performed without obtaining a permit prior to such repair. Emergency repair work shall be completed in accordance with applicable directives from the City or other authority as expeditiously as possible. The City shall be notified on all emergency repair work by 10:00 a.m., the workday following beginning of such repair work and the proper applications made at that time.

(e) Wireless Communication Facilities. Wireless communication facilities permitted in accordance with Section 42-108 do not require a permit issued pursuant to this article.

**SECTION 3. AMENDMENT OF ARTICLE IV, “CITY OF PALM COAST COMMUNICATIONS RIGHTS-OF-WAY” OF CHAPTER 42, “STREETS, ROADS, BRIDGES, AND OTHER PUBLIC PLACES”.** That Article IV, “City of Palm Coast

Communications Rights-of-Way” of Chapter 42, “Streets, Roads, Bridges, and Other Public Places” of the City Code of Ordinances, is hereby amended as shown in Attachment “A.”

**SECTION 4. SEVERABILITY.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Code are severable, and if any phrase, clause, sentence, paragraph or section of this Code shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections of this Code.

**SECTION 5. CODIFICATION.** It is the intention of the City Council of the City of Palm Coast, Florida, and it is hereby ordained that the provisions of this Ordinance shall become and be made a part of the Code of Ordinances of the City of Palm Coast, Florida; that the Sections of this Ordinance may be renumbered or re-lettered to accomplish such intention; that the word, “Ordinance” may be changed to “Section,” “Article,” or other appropriate word.

**SECTION 6. CONFLICTS.** All ordinances or parts of ordinances in conflict with this Ordinance are hereby repealed.

**SECTION 7. EFFECTIVE DATE.** This Ordinance shall become effective immediately upon its passage and adoption.

Approved on first reading this \_\_\_ day of \_\_\_\_\_ 2018.

Adopted on second reading after due public notice and hearing this \_\_\_ day of \_\_\_\_\_ 2018.

**CITY OF PALM COAST, FLORIDA**

ATTEST:

\_\_\_\_\_  
MILISSA HOLLAND, MAYOR

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

Approved as to form and legality

\_\_\_\_\_  
William E. Reischmann Jr. Esq.



## ATTACHMENT "A"

### ARTICLE IV. - COMMUNICATIONS RIGHTS-OF-WAY

#### Sec. 42-101. - Title.

This article shall be known and may be cited as the "City of Palm Coast Communications Rights-of-Way Ordinance".

#### Sec. 42-102. - Intent and purpose.

It is the intent of the City to promote the public health, safety and general welfare by: Providing for the placement or maintenance of communications facilities in the public rights-of-way within the City; adopting and administering reasonable rules and regulations not inconsistent with state and federal law, including F.S. § Section 337.401, F.S.(2000), as it may be amended, the City's home rule authority, and in accordance with the provisions of the Federal Telecommunications Act of 1996 and other federal and state law; establishing reasonable rules and regulations necessary to manage the placement or maintenance of communications facilities in the public rights-of-way by all communications services providers; and minimizing disruption to the public rights-of-way. In regulating its public rights-of-way, the City shall be governed by and shall comply with all applicable federal and state laws. These regulations are specifically subject to state and federal law limitations.

#### Sec. 42-103. - Definitions.

For purposes of this article, the following terms, phrases, words and their derivations shall have the meanings given. Where not inconsistent with the context, words used in the present tense include the future tense, words in the plural number include the singular number, and words in the singular number include the plural number. The words "shall" and "will" are mandatory, and "may" is permissive. Words not otherwise defined shall be construed to mean the common and ordinary meaning.

Abandonment shall mean the permanent cessation of all uses of a communications facility for a period of 180 or more consecutive days; provided that this term shall not include cessation of all use of a facility within a physical structure where the physical structure continues to be used for some purpose or use accessory to the communications facility. By way of example and not limitation, cessation of all use of a cable within a conduit, where the conduit continues to be used, shall not be "abandonment" of a facility in public rights-of-way. A wireless infrastructure provider's failure to have a wireless service provider provide service through a small wireless facility collocated on a utility pole within nine months after the application is approved in accordance with Section 42-108 shall constitute abandonment.

Antenna shall mean communications equipment that transmits or receives electromagnetic radio frequency signals used in providing wireless services.

Applicable Codes shall mean a uniform building, fire, electrical, plumbing, or mechanical codes adopted by a recognized national code organization or local amendments to those codes enacted solely to address threats of destruction of property or injury to persons, or local codes or ordinances adopted to implement this subsection. The term includes objective design standards adopted by ordinance which may require that a new utility pole replacing an existing utility pole be of substantially similar design, material, and color, or that ground-mounted equipment meet reasonable spacing requirements.

The term includes objective design standards adopted by ordinance which may require a small wireless facility to meet reasonable location context, color, stealth, and concealment requirements.

As-built plans shall mean final and complete drawings in a format as specified by the Planning Manager or designee submitted upon completion of a project, signed and sealed by a professional surveyor or mapper as defined in Section 472.005, F.S., that reflect all changes made during the construction process, and show the exact dimensions, geometry and location of all elements of the work completed under the permit.

Base station shall mean a structure or equipment at a fixed location that enables FCC-licensed or authorized wireless communications between user equipment and a communications network. The term does not encompass a tower as defined in Section 4.20, Land Development Code, or any equipment associated with a tower. "Base station" includes, without limitation:

1. Equipment associated with wireless communications services such as private, broadcast, and public safety services, as well as unlicensed wireless services and fixed wireless services such as microwave backhaul.

2. Radio transceivers, antennas, coaxial or fiber-optic cable, regular and backup power supplies, and comparable equipment, regardless of technological configuration (including distributed antenna systems ("DAS") and small-cell networks).

3. Any structure other than a tower that, at the time the relevant application is filed with the City under this subsection, supports or houses equipment described in subsections (1) and (2) of this definition that has been reviewed and approved under the applicable zoning or siting process, or under another state or local regulatory review process, even if the structure was not built for the sole or primary purpose of providing that support.

The term does not include any structure that, at the time the relevant application is filed with the City under this subsection, does not support or house equipment described in subsections (1) and (2) of this definition.

City shall mean City of Palm Coast, Florida.

City Utility Pole shall mean a utility pole owned by the City in the public rights-of-way. The term does not include a utility pole owned by a municipal electric utility, a utility pole used to support municipally owned or operated electric distribution facilities, or a utility pole located in the public rights-of-way within a retirement community that: (a) is deed restricted as housing for older persons as defined in Section 760.29(4)(b), F.S.; (b) has more than 5,000 residents; and (c) has underground facilities for electric transmission or distribution.

Collocate or Collocation shall mean to install, mount, maintain, modify, operate, or replace one or more Wireless Communication Facilities on, under, within, or adjacent to a wireless support structure or utility pole. The term does not include the installation of a new utility pole or wireless support structure in the public rights-of-way.

Communications facility or facility or system shall mean any permanent or temporary plant, equipment and property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and other equipment or pathway placed or maintained or to be placed or maintained in the public rights-of-way of the City and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer communications services.

Communications services shall mean the definition in Section 202.11(1), F.S., as may be amended, and also includes, but is not limited to wireless services, as defined herein. transmission, conveyance or routing of voice, data, audio, video, or any other information or signals to a point, or between or among points, by or through any electronic, radio, satellite, cable, optical, microwave, or other medium or method now in existence or hereafter devised, regardless of the protocol used for such transmission or conveyance. Notwithstanding the foregoing, for purposes of this article "cable service", as defined in F.S. § 202.11(2), (2000), as it may be amended, is not included in the definition of "communications services", and cable service providers may be subject to other ordinances of the City.

Communications services provider shall mean any person including a municipality or county providing communications services through the placement or maintenance of a communications facility in public rights-of-way. "Communications services provider" shall also include any person including a municipality or county that places or maintains a communications facility in public rights-of-way but does not provide communications services. The term includes pass-through providers and wireless infrastructure providers.

Communications facility or facility or system shall mean any permanent or temporary plant, equipment and property, including but not limited to cables, wires, conduits, ducts, fiber optics, poles, antennae, converters, splice boxes, cabinets, hand holes, manholes, vaults, drains, surface location markers, appurtenances, and other equipment or pathway placed or maintained or to be placed or maintained in the public rights-of-way of the City and used or capable of being used to transmit, convey, route, receive, distribute, provide or offer communications services.

Dealer shall mean any person, municipality or county providing communications services to an end user in the City through the use and operation of communications facilities installed, placed and maintained in the public rights-of-way, whether owner or leased, and who has registered with the Florida Department of Revenue as a provider of communications services pursuant to Chapter 202, F.S. This term is intended to include any "Reseller."

Eligible Facilities Request shall mean any request for modification of an existing tower or base station that, in accordance with the definitions contained in FCC regulations codified at 47 C.F.R. § 1.40001, does not substantially change the physical dimensions of the existing structure and is requesting:

- (1) Collocation of new transmission equipment;
- (2) Removal of existing transmission equipment; or
- (3) Replacement of existing transmission equipment.

FCC shall mean the Federal Communications Commission.

In public rights-of-way or in the public rights-of-way shall mean in, on, over, under or across the public rights-of-way.

Ordinance shall mean this article.

Micro Wireless Facility shall mean a small wireless facility having dimensions no larger than 24 inches in length, 15 inches in width, and 12 inches in height, and an exterior antenna, if any, no longer than 11 inches.

Pass-Through Facilities shall mean the facilities for a communications system that merely pass through the City from one point to another point and from which no revenues are directly attributable to subscribers or other carriers within the City.

Pass-Through Provider shall mean any person who places or maintains a communications facility in the public rights-of-way and who does not remit taxes imposed by the City pursuant to Chapter 202, F.S. A pass-through provider can also be a wireless infrastructure provider as defined in Section 337.401, F.S., as amended, or a communications facility provider pursuant to this section.

Permit shall mean a communications rights-of-way permit required pursuant to Section 42-108 prior to commencement of any placement or maintenance of facilities within the public rights-of-way.

*Person* shall include any individual, children, firm, association, joint venture, partnership, estate, trust, business trust, syndicate, fiduciary, corporation, organization or legal entity of any kind, successor, assignee, transferee, personal representative, and all other groups or combinations, and shall include the City only to the extent the City acts as a communications services provider.

*Place or maintain or placement or maintenance or placing or maintaining* shall mean to erect, construct, install, maintain, place, repair, extend, expand, remove, occupy, locate or relocate. A communications services provider that owns or exercises physical control over communications facilities in public rights-of-way, such as the physical control to maintain and repair, is "placing or maintaining" the facilities. A person providing service only through resale or only through use of a third party's unbundled network elements is not "placing or maintaining" the communications facilities through which such service is provided. The transmission and receipt of radio frequency signals through the airspace of the public rights-of-way does not constitute "placing or maintaining" facilities in the public rights-of-way.

*Public rights-of-way* shall mean a public right-of-way, public utility easement, highway, street, bridge, tunnel or alley for which the City is the authority that has jurisdiction and control and may lawfully grant access to pursuant to applicable law, and includes the surface, the air space over the surface and the area below the surface. "Public rights-of-way" shall not include private property. "Public rights-of-way" shall not include any real or personal City property except as described above and shall not include City buildings, fixtures, poles, conduits, facilities or other structures or improvements, regardless of whether they are situated in the public rights-of-way.

*Registrant* shall mean a communications services provider that has registered with the City in accordance with the provisions of this article.

*Registration* or *register* shall mean the process described in this article whereby a communications services provider provides certain information to the City.

Repurposed structure shall mean an existing structure that has been renovated, reconfigured, or replaced with a similar structure so as to continue serving its primary existing purpose while also supporting the attachment of communications facilities, through stealth design or otherwise, that is approximately in the same location as the existing structure and in such a manner that does not result in a net increase in the number of structures located within the public rights-of-way and does not interfere with pedestrian or vehicular access, and is compliant with applicable codes. To "repurpose an existing structure" shall mean the act of renovating, reconfiguring or replacing an existing structure as described above.

Reseller shall mean any person providing communications services within the City over a communications system, or portion thereof, for which a separate charge is made, where that person does not place or maintain, nor own or control, any of the underlying facilities in the public rights-of-way by either interconnecting with the facilities of a communications services provider utilizing the public rights-of-way or by leasing excess capacity from a facility-based communications services provider.

Stealth Design shall mean a method of camouflaging any tower, antenna or other communications facility, including, but not limited to, supporting electrical or mechanical equipment, which is designed to enhance compatibility with adjacent land uses and be as visually unobtrusive as possible. Stealth design may include a repurposed structure or a wrap.

Small wireless facility shall mean a wireless communication facility that meets the following qualifications:

(1) Each antenna associated with the facility is located inside an enclosure of no more than 6 cubic feet in volume or, in the case of antennas that have exposed elements, each antenna and all of its exposed elements could fit within an enclosure of no more than 6 cubic feet in volume; and

(2) All other wireless equipment associated with the facility is cumulatively no more than 28 cubic feet in volume. The following types of associated ancillary equipment are not included in the calculation of equipment volume: electric meters, concealment elements, telecommunications demarcation boxes, ground-based enclosures, grounding equipment, power transfer switches, cutoff switches, vertical cable runs for the connection of power and other services, and utility poles or other support structures.

Surrounding Neighborhood shall mean the area within a five hundred (500) foot radius of a communications facility site or proposed communications facility site.

Utility Pole shall mean a pole or other similar structure that is used in whole or part to provide communication services or for electric distribution, lighting, traffic control, signage, or a similar function. The term includes the vertical support structure for traffic lights but does not include a horizontal structure to which signal lights or other traffic control devices are attached and does not include a pole or similar structure 15 feet in height or less unless the City grants a waiver for the pole. The term does not include a City utility pole, nor does it include any other utility pole exempt from such term pursuant to Section 337.401, F.S.

Wireless Communication Facility or Wireless Communication Facilities shall mean any equipment at a fixed location which enables wireless communications between user equipment and a communications network, including radio transceivers, antennas, wires, coaxial, or fiber-optic cable or other cables, regular and backup power supplies, and comparable equipment, regardless of technological configuration, and equipment associated with wireless communications. The term includes small wireless facilities. The term does not include: (a) the structure or improvements on, under, within, or adjacent to the structure on which the equipment is collocated; (b) wireline backhaul

facilities; or (c) coaxial or fiber-optic cable that is between wireless structures or utility poles or that is otherwise not immediately adjacent to or directly associated with a particular antenna.

Wireless Infrastructure Provider shall mean a person who has been certificated to provide telecommunications service in the state and who builds or installs wireless communication transmission equipment, wireless communication facilities, or wireless support structures but is not a wireless services provider.

Wireless Provider shall mean a wireless infrastructure provider or a wireless services provider.

Wireless Services shall mean any services provided using licensed or unlicensed spectrum, whether at a fixed location or mobile, using wireless communication facilities.

Wireless Services Provider shall mean a person who provides wireless services.

Wireless Support Structure shall mean a freestanding structure, such as a monopole, a guyed or self-supporting tower, or another existing or proposed structure designed to support or capable of supporting wireless communication facilities. The term does not include a utility pole.

Wrap shall mean an aesthetic covering depicting scenic imagery, such as vegetation, which blends with the surrounding area.

#### Sec. 42-104. – General Prohibitions.

- (a) Wireless communication facilities, other than small wireless facilities and micro wireless facilities, are prohibited within the public rights-of-way.
- (b) Wireless communication facilities are prohibited within the public rights-of-way of roadways and railways under the jurisdiction and control of the Florida Department of Transportation unless approved in writing by the Florida Department of Transportation and, pursuant to any permit delegation agreement, the City.
- (c) Wireless communication facilities are prohibited on arms used to support or mount traffic control signals and warning signals, and on arms attached to utility poles.

#### Sec. 42-~~104~~105. - Registration for placing or maintaining communications facilities in public rights-of-way.

- (a) Applicability. All persons, including, but not limited to, a A communications services provider, pass-through provider, or wireless infrastructure provider, seeking that desires to place or maintain a communications facility in public rights-of-way in the City shall first register with the City in accordance with this article before being eligible to receive a permit. Subject to the terms and conditions prescribed in this article and issuance of a permit, a registrant may place or maintain a communications facility such facilities in public rights-of-way.
- (b) Limits of Registration. An effective registration shall not convey any title, equitable or legal, to the registrant in the public rights-of-way. Registration under this article governs only the

placement or maintenance of communications facilities in public rights-of-way. Other ordinances, codes or regulations may apply to the placement or maintenance in the public rights-of-way of facilities that are not communications facilities. Registration does not excuse a communications services provider from obtaining appropriate access or pole attachment agreements before locating its facilities on the City or another person's facilities. Registration does not excuse a communications services provider from complying with all applicable City ordinances, codes or regulations, including this article.

(c) Application Requirements. Each communications services provider that desires to place or maintain a small wireless facility, micro wireless facility, or utility pole for collocation of a small wireless facility ~~communications facility~~ in public rights-of-way in the City shall file a single registration with the City which shall, at minimum, include the following information:

(1) Name of the applicant under which it will transact business in the City and, if different, in the state of Florida;

(2) Name, address and telephone number of the applicant's primary contact person in connection with the registration, and the person to contact in case of an emergency;

(3) Name, address, and telephone number of the applicant's principal place of business in the state of Florida, and any branch office located in the City, or, if none, the name, address, and telephone number of the applicant's national headquarters and its registered agent in Florida; and For registrations submitted prior to October 1, 2001, the applicant shall state whether it provides local service or toll service or both;

(4) Evidence of the insurance coverage required under this article and acknowledgment that registrant has received and reviewed a copy of this article, which acknowledgment shall not be deemed an agreement; ~~and~~

(5) A copy ~~The number~~ of the applicant's certificate of authorization, public convenience and necessity, or other similar certification or licenses to provide communications services issued by the Florida Public Service Commission, the FCC ~~Federal Communications Commission~~, or other federal or state authority, if any;

(6) ~~For an applicant that does not provide a Florida Public Service Commission certificate of authorization number, if the applicant is a corporation, proof of authority to do business in the State of Florida, such as the number of the certificate from or filing with the Florida Department of State. If the applicant is a corporation, proof of authority to do business in the state of Florida, including the number of the corporate certification;~~

(7) A copy of both the applicant's resale certificate and certificate of registration issued by the Florida Department of Revenue to engage in the business of providing communications services in the state of Florida, if any;

(8) The type of communications services that the applicant intends to provide within the corporate limits of the City (if more than one, state all that apply), or, if none, state that the applicant is a pass-through provider or is intending only to place and maintain pass-through facilities, as the case may be, and whether the applicant currently remits or intends to remit Communications Services Tax, as authorized in Ch. 202, F.S.; and

(d) Application Fees. ~~No registration application fees shall be imposed for registration under this Article. Each applicant for a registration shall submit a registration application fee with the~~

~~application, which shall not be refunded if the application is withdrawn; provided that the registrant may credit the registration application fee as provided in F.S. § 337.401(3). Fee amounts shall be established by resolution of the City and shall be in an amount not to exceed the City's costs and expenses incurred in connection with reviewing and approving the registration. If the registration application fee is insufficient to cover all costs or expenses incurred by the City in connection with review and approval of the registration, the applicant shall reimburse the City for any such costs and expenses in excess of the registration application fee following receipt of written notice, which shall explain any additional costs or expenses. This subsection (d)(1) shall be repealed and shall have no force or effect on or after October 1, 2001.~~

~~(1) No registration application fees shall be imposed on or after October 1, 2001.~~

- (e) Review of Registration. The City shall review the information submitted by the applicant. Such review shall be by the designated City Manager official or his or her designee. If the applicant submits information in accordance with subsection (c) above, the registration shall be effective and the City shall notify the applicant of the effectiveness of registration in writing. If the City determines that the information has not been submitted in accordance with subsection (c) above, the City shall notify the applicant of the non-effectiveness of registration, and reasons for the non-effectiveness, in writing. The City shall so reply to an applicant within 30 days after receipt of registration information from the applicant. Non-effectiveness of registration shall not preclude an applicant from filing subsequent applications for registration under the provisions of this section. An applicant has 30 days after receipt of a notice of non-effectiveness of registration to appeal the decision as provided in section 42-~~114108~~.
- (f) Cancellation of Registration. A registrant may cancel a registration upon written notice to the City stating that it will no longer place or maintain any communications facilities in public rights-of-way within the City and will no longer need to obtain permits to perform work in public rights-of-way. A registrant cannot cancel a registration if the registrant continues to place or maintain any communications facilities in public rights-of-way.
- (g) Non-exclusivity. Registration does not, in and of itself, establish a right to place or maintain or priority for the placement or maintenance of a communications facility in public rights-of-way within the City but shall establish for the registrant a right to apply for a permit, if permitting is required by the City. Registrations are expressly subject to any future amendment to or replacement of this article and further subject to any additional City ordinances, as well as any state or federal laws that may be enacted. Registration does not excuse or exempt a communications services provider from having to obtain a local business tax receipt, if required, from the City in accordance with the City Code.
- (h) Registration Renewal. A registrant shall renew its registration with the City by April 1 of even-numbered years in accordance with the registration requirements in this article, except that a registrant that initially registers during the even-numbered year when renewal would be due or the odd-numbered year immediately preceding such even-numbered year shall not be required to renew until the next even-numbered year. Within 30 days of any change in the information required to be submitted pursuant to subsection (c), ~~except, as of October 1, 2001, subsection (c)(3),~~ a registrant shall provide updated information to the City. If no information in the then-existing registration has changed, the renewal may state that no information has changed. Failure to renew a registration may result in the City restricting the issuance of additional permits until the communications services provider has complied with the registration requirements of this article.



- (i) Applicability to Resellers. In accordance with applicable City ordinances, codes or regulations, a permit may be required of a communications services provider that desires to place or maintain a communications facility in public rights-of-way. An effective registration shall be a condition of obtaining a permit. Notwithstanding an effective registration, permitting requirements shall apply. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met. A reseller, which by definition does not place or maintain communications facilities in the public rights-of-way, is not required to register with the City.

Sec. ~~42-105-106~~. - Notice of transfer, sale or assignment of assets in public rights-of-way.

If a registrant transfers, sells or assigns its assets located in public rights-of-way incident to a transfer, sale or assignment of the registrant's assets, the transferee, buyer or assignee shall be obligated to comply with the terms of this article. Written notice of any such transfer, sale or assignment shall be provided by such registrant to the City within 20 days after the effective date of the transfer, sale or assignment. If the transferee, buyer or assignee is a current registrant, then the transferee, buyer or assignee is not required to re-register. If the transferee, buyer or assignee is not a current registrant, then the transferee, buyer or assignee shall register as provided in section ~~42-104~~105 within 60 days of the transfer, sale or assignment. If any applications for a permit are pending under the communications services provider's name as of the date the City receives written notice of the transfer, sale, or assignment, then the City shall consider the transferee, buyer or assignee as the new applicant unless otherwise notified by the communications services provider. If any permit applications are pending under the registrant's name as of the date the City receives written notice of the transfer, sale, or assignment, then the City shall consider the transferee, buyer or assignee as the new applicant unless otherwise notified by the registrant.

Sec. 42-107.- Involuntary termination of registration.

- (a) The City may terminate a registration if:

(1) A federal or Florida authority suspends, denies, or revokes a registrant's certification or license to provide communications services;

(2) The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice; or

(3) The registrant ceases to use all of its communications facilities in public rights-of-way and has not complied with section 42-123 of this article.

(4) The registrant fails to comply with any of the rules, regulations, or general conditions set forth herein.

- (b) Notice of intent to terminate. Prior to termination, the City Manager or designee, shall notify the registrant with a written notice setting forth all matters pertinent to the proposed termination action, including which of (1) through (4) above is applicable as the reason therefore, and describing the proposed action of the City. The registrant shall have 30 days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the City Manager or designee, to accomplish the same. If not eliminated, or if the plan is rejected, the City Manager or designee shall provide written notice

of such rejection within 15 days of receipt of the plan to the registrant. A registrant shall be notified by written notice of any decision by the City Manager or designee to terminate its registration. Such written notice shall be sent within seven days after the decision. Should registrant wish to appeal the City Manager or designee's decision, the appeal to City Council shall be subject to the appeal process as provided in section 42-114.

- (c) In the event of termination, the former registrant shall:
- (1) Notify the City of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in public rights-of-way; or
  - (2) Provide the City with an acceptable plan for disposition of its communications facilities in public rights-of-way. If a registrant fails to comply with this subsection (c), which determination of noncompliance is subject to appeal as provided in section 42-114, the City may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of the facilities where another person has not assumed the ownership or physical control of the facilities; or requiring the registrant within 90 days of the termination, or such longer period as may be agreed to by the City, to remove some or all of the facilities from the public rights-of-way and restore the public rights-of-way to its original condition before the removal.
- (d) In any event, a terminated registrant shall take such steps as are necessary to render safe every portion of the communications facilities remaining in the public rights-of-way of the City.
- (e) In the event of termination of a registration, this section does not authorize the City to cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and who is registered with the City, if required.
- (f) The City's right to terminate a registration shall be in addition to all other rights of the City, whether reserved in this article, or authorized by other law. No action, proceeding or exercise of the right to terminate registration will affect or preclude any other right the City may have.

Sec. 42-106108. – Communications Rights-of-Way Permit Required. ~~Placement or maintenance of a communications facility in public rights-of-way.~~

- (a) ~~A registrant shall at all times comply with and abide by all applicable provisions of the state and federal law and City ordinances, codes and regulations in placing or maintaining a communications facility in public rights-of-way.~~
- (b) Communications Rights-of-Way Permit Required. ~~Except as provided herein, a~~ A registrant shall not commence to place, ~~or maintain, or modify~~ a communications facility in public rights-of-way, without a communications rights-of-way permit issued by the City Manager or designee in accordance with this section, unless otherwise exempt as provided herein. An effective registration shall be a condition of obtaining a permit. A permit may be obtained by or on behalf of a registrant having an effective registration if all permitting requirements are met. A registrant shall not commence to place or maintain a communications facility in the public rights-of-way until all applicable permits if any, have been issued by the City or other appropriate authority, except in the case of an emergency. The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-

~~service condition of a pre-existing service. Registrant shall provide prompt notice to the City of the placement or maintenance of a communications facility in public rights-of-way in the event of an emergency and shall or may be required to obtain an after-the-fact permit if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency. Registrant acknowledges that as a condition of granting such permits, the City may impose reasonable rules or regulations governing the placement or maintenance of a communications facility in public rights-of-way. Permits shall apply only to the areas of public rights-of-way specifically identified in the permit.~~

(b) *Permit Not Required.*

(1) A registrant shall be allowed to perform emergency maintenance within the public rights-of-way without first obtaining a permit. The term "emergency" shall mean a condition that affects the public's health, safety or welfare, which includes an unplanned out-of-service condition of a pre-existing service. Registrant shall provide prompt notice to the City of the placement or maintenance of a communications facility in public rights-of-way in the event of an emergency, and may be required to obtain an after-the-fact permit within 15 days of completing the emergency work, if a permit would have originally been required to perform the work undertaken in public rights-of-way in connection with the emergency.

(2) A registrant shall be allowed to perform routine maintenance within the public rights-of-way if such proposed routine maintenance does not involve excavation, construction, or disruption to transportation in the public rights-of-way. If routine maintenance requires the closure of the public rights-of-way, a permit shall be required.

(3) A permit shall not be required for replacement of an existing small wireless facility with a small wireless facility that is substantially similar or of the same or smaller size.

(4) A permit shall not be required for the installation, placement, maintenance, or replacement of micro wireless facilities that are suspended on cables strung between existing utility poles in compliance with applicable codes by or for a communications services provider authorized to occupy the public rights of-way and who is remitting taxes under Chapter 202, F.S. At least 30 days prior to placing a micro wireless facility in the public rights-of-way pursuant to this subsection, the registrant shall submit a certification of the micro wireless facility's dimensions to the City for review. If the micro wireless facility's dimensions exceed the dimensions to constitute a micro wireless facility, the registrant shall not be authorized to place such facility in the public rights-of-way.

(5) Prior to performing any work authorized herein without a permit, a registrant shall provide reasonable advance written notice to the City identifying the areas where such work will occur, scope of work, and dates(s) and duration of work to be performed.

(c) *Pre-Application Conference.* To minimize issues related to permit application, prior to submitting materials for a permit application, a registrant must request a pre-submittal meeting with the Planning Manager or designee to discuss the registrant's plans and network goals for placing and maintaining wireless communications facilities in the public rights-of-way. The City shall undertake efforts to accommodate a registrant's request within ten (10) business days of a request. As part of any permit application to place a new or replace an existing communications facility in public rights-of-way, the registrant shall provide the following:

(1) The location of the proposed facilities, including a description of the facilities to be installed, where the facilities are to be located, and the approximate size of facilities that will be located in public rights-of-way;

- (2) — A description of the manner in which the facility will be installed (i.e. anticipated construction methods or techniques);
- (3) — A maintenance of traffic plan for any disruption of the public rights-of-way;
- (4) — Information on the ability of the public rights-of-way to accommodate the proposed facility, if available (such information shall be provided without certification as to correctness, to the extent obtained from other persons);
- (5) — If appropriate given the facility proposed, an estimate of the cost of restoration to the public rights-of-way;
- (6) — The timetable for construction of the project or each phase thereof, and the areas of the City which will be affected; and
- (7) — Such additional information as the City finds reasonably necessary with respect to the placement or maintenance of the communications facility that is the subject of the permit application to review such permit application.
- (d) ~~To the extent not otherwise prohibited by state or federal law, the City shall have the power to prohibit or limit the placement of new or additional communications facilities within a particular area of public rights-of-way.~~ Application Requirements. To ensure compliance with federal and state law, applicants shall request and schedule an application submittal appointment with the Planning Manager or designee or designee. Permit application submittal appointments shall be scheduled by the City, at the City's sole discretion, upon no less than five days advanced written notice by the applicant. No permit application shall be deemed accepted by the City unless received at a scheduled permit application submittal appointment. No more than one consolidated collocation permit application, for a maximum of 30 small wireless facilities, or five individual permit applications shall be received at a permit application submittal appointment. The application shall be in a form approved by the Planning Manager or designee, and shall include such information as the City finds reasonably necessary to demonstrate applicant's compliance with applicable codes for the placement of small wireless facilities in the locations identified in the application.
- (e) ~~All communications facilities shall be placed or maintained so as not to unreasonably interfere with the use of the public rights-of-way by the public and with the rights and convenience of property owners who adjoin any of the public rights-of-way. The use of trenchless technology (i.e., directional bore method) for the installation of facilities in the public rights-of-way as well as joint trenching or the co-location of facilities in existing conduit is strongly encouraged, and should be employed wherever feasible.~~ Affidavits.
- (i) An application for a permit to install new utility pole(s) or new wireless support structures (as opposed to collocations, applications to use an existing structure, or wireline pole attachment installations made in the communication space of utility poles) shall include an affidavit from a Florida licensed professional engineer with a statement that it is not feasible to locate applicant's proposed facilities on existing poles along the proposed route, and all the facts relied upon in the applicant's attempt to both collocate or attach the proposed new communications facilities on existing structures within the public rights-of-way, as well as on property outside the public rights-of-way, within a 500 foot radius of the proposed new communications facility.

(ii) An application for collocation shall include an affidavit from the owner of the facility or existing structure being collocated upon that the applicant has been granted permission to attach to the facility or existing structure being collocated upon or attached to.

(iii) An application from a wireless infrastructure provider to place a new utility pole in the public rights-of-way to support the collocation of small wireless facilities shall include an attestation that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within nine months after the date the application is approved. The wireless infrastructure provider shall use its best efforts to individually notify all adjacent property owners affected by the proposed construction prior to the commencement of that work. Such notification shall not be required for emergencies requiring immediate repairs.

(iv) The applicant shall certify that any and all of its abandoned facilities within the public rights-of-way have been removed, indicating the prior location of such abandoned facilities.

~~(f) All safety practices required by applicable law or accepted industry practices and standards shall be used during the placement or maintenance of communications facilities. *Permit applicant not registrant.* If the applicant for the permit is not the registrant, the application must include a statement of authority by the registrant for the applicant to act on behalf of the registrant. In addition, if the applicant is a contractor, the application must include the contractor's license or registration confirming the contractor's authority to perform construction in the City and statements as to whether the contractor has any open permits with the City, and if so, the permit identification number or information.~~

~~(g) After the completion of any placement or maintenance of a communications facility in public rights-of-way or each phase thereof, a registrant shall, at its own expense, restore the public rights-of-way to its original condition before such work. If the registrant fails to make such restoration within 30 days, or such longer period of time as may be reasonably required under the circumstances, following the completion of such placement or maintenance, the City may perform restoration and charge the costs of the restoration against the registrant in accordance with F.S. § 337.402, (2000), as it may be amended. For 12 months following the original completion of the work, the registrant shall guarantee its restoration work and shall correct any restoration work that does not satisfy the requirements of this article at its own expense. *Information regarding height limitations.* For applications for installation of a utility pole to support the collocation of a small wireless facility, the applicant shall provide information regarding the heights of other utility poles located in the public rights-of-way within five hundred (500) feet of the proposed location of the utility pole. If there is no utility pole within five hundred (500) feet of the proposed utility pole, the applicant shall so certify.~~

~~(h) Removal or relocation at the direction of the City of a registrant's communications facility in public rights-of-way shall be governed by the provisions of F.S. §§ 337.403 and 337.404, (2000), as they may be amended. *Revised Plans.* If the plans or drawings submitted showing the proposed location for installation of the facility in the public rights-of-way require revision for any reason prior to commencing construction, the communications services provider shall promptly submit revised plans and drawings to the Planning Manager or designee.~~

~~(i) A permit from the City constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this article, and does not create a property right or grant~~

~~authority to impinge upon the rights of others who may have an interest in the public rights-of-way. Consolidated Collocation Application. An applicant seeking to collocate small wireless facilities within the City's boundaries may, at the applicant's discretion, file a consolidated application with the City and receive a single permit for the collocation of up to 30 small wireless facilities. If the application includes multiple small wireless facilities, the City may separately address small wireless facility collocations for which incomplete information has been received or which are denied.~~

- ~~(j) A registrant shall maintain its communications facility in public rights-of-way in a manner consistent with accepted industry practice and applicable law. Stop Work Order. The City Manager or designee may issue an immediate stop work order where any permitted or unpermitted construction or other work in the public rights-of-way poses a serious threat to the health, safety, or welfare of the public until such serious threat has been abated. Failure to comply with such order may subject a registrant, and its agents, employees, and contractors as applicable, to appropriate enforcement remedies as set forth herein.~~
- ~~(k) In connection with excavation in the public rights-of-way, a registrant shall, where applicable, comply with the Underground Facility Damage Prevention and Safety Act set forth in F.S. ch. 556, (2000), as it may be amended. Communications Services Tax In Lieu of Permit fee. A registrant that places or maintains a communications facility in the public rights-of-way and that pays communications services taxes shall not be required to pay a permit fee since the City has elected to collect the Communications Services Tax pursuant to Ch. 202, F.S. as same may be amended from time to time. Pass-through providers shall pay a fee pursuant to Section 337.401(5), F.S. as amended from time to time, and City Code Section 42-124.~~
- ~~(l) Registrant shall use and exercise due caution, care and skill in performing work in the public rights-of-way and shall take all reasonable steps to safeguard work site areas.~~
- ~~(m) Upon request of the City, and as notified by the City of the other work, construction, installation or repairs referenced below, a registrant may be required to coordinate placement or maintenance activities under a permit with any other work, construction, installation or repairs that may be occurring or scheduled to occur within a reasonable time frame in the subject public rights-of-way, and registrant may be required to reasonably alter its placement or maintenance schedule as necessary so as to minimize disruptions and disturbance in the public rights-of-way.~~
- ~~(n) A registrant shall not place or maintain its communications facilities so as to interfere with, displace, damage or destroy any facilities, including but not limited to, sewers, gas or water mains, storm drains, pipes, cables or conduits of the City or any other person's facilities lawfully occupying the public rights-of-way of the City.~~
- ~~(o) The City makes no warranties or representations regarding the fitness, suitability, or availability of City's public rights-of-way for the registrant's communications facilities and any performance of work, costs incurred or services provided by registrant shall be at registrant's sole risk. Nothing in this article shall affect the City's authority to add, vacate or abandon public rights-of-way, and City makes no warranties or representations regarding the availability of any added, vacated or abandoned public rights-of-way for communications facilities.~~
- ~~(p) The City shall have the right to make such inspections of communications facilities placed or maintained in public rights-of-way as it finds necessary to ensure compliance with this article.~~
- ~~(q) A permit application to place a new or replace an existing communications facility in public rights-of-way shall include plans showing the location of the proposed installation of facilities in the public~~

~~rights-of-way. If the plans so provided require revision based upon actual installation, the registrant shall promptly provide revised plans. The plans shall be in a hard copy format or an electronic format specified by the City, provided such electronic format is maintained by the registrant. Such plans in a format maintained by the registrant shall be provided at no cost to the City.~~

- ~~(r) The City reserves the right to place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables or conduit, and to do, and to permit to be done, any underground and overhead installation or improvement that may be deemed necessary or proper by the City in public rights-of-way occupied by the registrant. The City further reserves without limitation the right to alter, change, or cause to be changed, the grading, installation, relocation, or width of the public rights-of-way within the limits of the City and within said limits as same may from time to time be altered.~~
- ~~(s) A registrant shall, on the request of any person holding a permit issued by the City, temporarily raise or lower its communications facilities to permit the work authorized by the permit. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the registrant shall have the authority to require such payment in advance. The registrant shall be given not less than 30 days advance written notice to arrange for such temporary relocation.~~

~~A wireless facility that is a portion of a communication facility, such as an antenna ("wireless facility(ies)"), which is attached to a legally maintained vertical structure in the public rights-of-way, such as a light pole or utility pole ("vertical structure(s)"), shall be subject to the following criteria:~~

- ~~(1) Wireless facilities may not extend more than 20 feet above the highest point of the vertical structure;~~
- ~~(2) Wireless facilities that are attached to a vertical structure located in public rights-of-way that is 15 feet or less in width and is located adjacent to real property used as a single family residence shall be flush mounted to the vertical structure;~~
- ~~(3) Wireless facilities shall not have any type of lighted signal, lights, or illuminations unless required by an applicable federal, state, or local rule, regulation or law;~~
- ~~(4) Wireless facilities shall comply with any applicable Federal Communications Commission Emissions Standards;~~
- ~~(5) The design, construction, and installation of such wireless facilities shall comply with any applicable local building codes;~~
- ~~(6) No commercial advertising shall be allowed on such wireless facilities; and~~
- ~~(7) Any accessory equipment and related housing in the public rights-of-way that are used in conjunction with such a wireless facility shall comply with any applicable local rules, regulations, ordinances, or laws governing the placement and design of such equipment.~~

~~Vertical structures, such as towers, whose sole purpose is to serve as a mounting device for antennae, are expressly prohibited from being placed in the public rights-of-way unless applicable zoning and land use laws or regulations allow such structures to be placed within the zoning district in which such public rights-of-way are located or to which they are adjacent.~~

42 - 109. – Permit Review.

(a) Review Process. The City shall process and issue permits for the placement, maintenance, or modification of communication facilities in the public rights-of-way subject to the following requirements:

(1) Within 14 days after the date of receiving the application, the City shall determine and notify the applicant by electronic mail to the email address provided in the application as to whether the application is complete. If an application is deemed incomplete, the City shall specifically identify the missing information. An application is deemed complete if the City does not provide notification to the applicant within 14 days.

(2) If an applicant seeks to place or collocate a small wireless facility in the public rights-of-way, the City may, within 14 days after the date of filing the application, request that the proposed location of a small wireless facility be moved to another location in the right-of-way and placed on an alternative City utility pole or support structure, or may place a new utility pole. The City and the applicant may negotiate the alternative location, including any objective design standards and reasonable spacing requirements for ground-based equipment, for 30 days after the date of the request. At the conclusion of the negotiation period, if the alternative location is accepted by the applicant, the applicant must notify the City of such acceptance and the application shall be deemed granted for any agreed upon new location and all other locations in the application. If an agreement is not reached, the applicant must notify the City of such non-agreement, and the City must grant or deny the original application within 90 days after the date the application was filed. A request for an alternative location, an acceptance of an alternative location, or a rejection of an alternative location must be in writing and provided by electronic mail. If the City does not use the 30-day negotiation period provided herein regarding collocation alternatives, the parties may mutually agree to extend the 60-day application review period. The City shall grant or deny the application at the end of the extended period.

(3) The City shall process all applications on a nondiscriminatory basis. Except as extended by the 30-day negotiation period provided in subsection (2) above, if the City fails to approve or deny a complete application within 60 days after receipt of the application, the application is deemed approved. The application review period may be extended upon mutual agreement by the parties.

(4) A permit issued pursuant to an approved application shall remain effective for 1 year unless extended by the City.

(5) The City shall notify the applicant of approval or denial by electronic mail. The City shall approve a complete application unless it does not meet the applicable provisions of this Article. If the application is denied, the City shall specify in writing the basis for denial, including the specific code provisions on which the denial is based, and shall send the documentation to the applicant by electronic mail on the day the City denies the application. The applicant may cure the deficiencies identified by the City and resubmit the application within 30 days after notice of the denial is sent to the applicant. Failure by the applicant to timely resubmit the application shall result in a final denial of the application. The City shall approve or deny a timely filed revised application within 30 days after receipt, or the application is deemed approved. Any subsequent review shall be limited to the deficiencies cited in the denial.

(b) Expert review. The City may require that all permit applications be reviewed by a third-party consultant or expert at the expense of the applicant for compliance with the requirements set



forth herein. No permit shall be issued to any applicant that has not fully reimbursed the City for the third-party review fees, which shall be limited to the specifically identified reasonable expenses incurred in the review.

- (c) Denial of Collocation of Small Wireless Facilities. The City may deny a proposed collocation of a small wireless facility in the public rights-of-way if the proposed collocation:
- (1) Materially interferes with the safe operation of traffic control equipment.
  - (2) Materially interferes with sight lines or clear zones for transportation, pedestrians, or public safety purposes.
  - (3) Materially interferes with compliance with the Americans with Disabilities Act or similar federal or state standards regarding pedestrian access or movement.
  - (4) Materially fails to comply with the 2010 edition of the Florida Department of Transportation Utility Accommodation Manual, or latest published version.
  - (5) Fails to comply with applicable codes, the Land Development Code, and the applicable provisions of this Article.
- (d) Limited Purpose of Communications Rights-of-Way Permit. A communications rights-of-way permit issued by the City constitutes authorization to undertake only certain activities in public rights-of-way in accordance with this article, and does not create any property right or other vested interest, or grant authority to impinge upon the rights of others who may have an interest in the public rights-of-way. Permits shall be granted only for specific routes or locations in the public rights-of-way and for such term as described in the permit. The City's issuance of a permit shall not be construed as a warranty that the placement of any communications facility is in compliance with applicable codes, regulations or laws.
- (e) Permit processing timeframes; "shot clock". The City's action on proposals to place or maintain communications facilities shall be subject to the applicable standards and time frames set out in Section 365.172, F.S., as amended from time to time; and 47 U.S.C. § 1455 (a) and Orders issued by the FCC, as same amended from time to time. All Federal and State "shot clock" timeframe guidelines that apply to any particular permit are hereby recognized by the City, and the City will make all reasonable efforts to comply.

Sec. 42-110. Placement of New Utility Poles or Wireless Support Structure.

- (a) The placing of any new utility pole, wireless support structure, or other above-ground structure for the collocation of a small wireless facility or micro wireless facility is subject to the approval of the Planning Manager or designee and these structures shall be erected under the supervision of the Planning Manager or designee or his designee. No new utility pole, wireless support structure, or other above-ground structure shall be allowed in the public rights-of-way unless the applicant demonstrates and the Planning Manager or designee determines that no existing structure, or alternative technology (that does not require the placement of a new structure in a public rights-of-way) can accommodate the applicant's proposed antenna or other communication facility. Such a demonstration by the applicant shall not give rise to a right to locate the proposed facility within the public rights-of-way or in any way guarantee City

approval of such. An applicant shall submit information requested by the Planning Manager or designee related to the availability of suitable existing structures or alternative technology. Evidence submitted to demonstrate that no existing structure or alternative technology can accommodate the applicant's proposed communications facility may consist of, but is not limited to, the following factors to be considered by the Planning Manager or designee:

- (1) No existing structures are located within the geographic area which would meet applicant's engineering requirements.
  - (2) Existing structures are not of sufficient height to meet applicant's engineering requirements, which shall be demonstrated by, at minimum, propagation and coverage maps.
  - (3) Existing structures do not have sufficient structural strength to support applicant's proposed antenna or other communications facility and related equipment.
  - (4) The applicant's proposed antenna would cause electromagnetic interference with the antenna on the existing structures, or the antenna on the existing structures would cause interference with the applicant's proposed antenna.
  - (5) The fees, costs, or contractual provisions required by the owner in order to share an existing structure or to adapt an existing structure for sharing are unreasonable.
  - (6) The applicant demonstrates that there are other limiting factors that render existing structures unsuitable.
  - (7) The applicant demonstrates that an alternative technology that does not require the use of new structures, such as cable microcell network using multiple low-powered transmitters/receivers attached to wire line system, is unsuitable. Costs of alternative technology that exceed new structure or antenna development shall not be presumed to render the technology unsuitable.
- (b) If approved, no such utility pole or other above-ground structure shall be placed in any gutter or drainage area and must be behind the curb to avoid damage to any sidewalk. In areas of the City where either electric utility wires or other communications facilities are above ground and such facilities are moved, either voluntarily or at the direction of the City, to a new utility pole or other above-ground structure, the communications services provider or wireless infrastructure provider shall likewise move all its above-ground facilities on such utility poles or structures to such new utility pole or structure within 30 days after receipt of written notice from either the City or the owner of the new utility pole or structure, without cost to the City.

Sec. 42-111. - Design, Placement and Collocation Standards for Communications Facilities in the Public Rights-of-Way.

- (a) *Objective Design Standards.* The placement of communications facilities anywhere in the public rights-of-way shall in all cases be designed in such a manner that the facilities and structures are

placed in a safe location that do not interfere with the traveling public, and shall be designed to maximize compatibility with the surrounding neighborhood and minimize any negative visual impact on the surrounding neighborhood. The following objective design standards regulating the location context, color, stealth design, and concealment of the proposed small wireless facility shall apply, unless waived by the City:

(1) All proposed small wireless facilities for collocation on a wireless support structure or utility pole shall meet one of the following stealth design standards:

a. Wires, cables and equipment to be collocated on a utility pole shall be within the utility pole or structure or covered with a shroud. No exposed wires or, cables are permitted. Slim design shall be used wherein the top mounted antenna does not exceed the diameter of the supporting utility pole at the level of the antenna attachment, and side mounted enclosures, if any, do not extend more than thirty (30) inches beyond the exterior dimensions of the existing structure, repurposed structure or utility pole at the level of antenna attachment measured from the edge of the pole to the outermost surface of the antenna; or

b. Wires, cables and equipment to be collocated on a utility pole shall be within the utility pole or covered with a shroud. No exposed wires or cables are permitted. A street light fixture shall be used to camouflage the small wireless facility such as through replacement of the cobra head with a new cobra head containing the small wireless facility. Any street light fixture shall be maintained in good working order by the applicant or pole owner.

(2) Applicants shall not place or maintain signage on communications facilities in public rights-of-way, unless otherwise required by federal or state law, provided; however, existing structures that lawfully supported signage before being repurposed may continue to support signage as otherwise permitted by law.

(3) A small wireless facility shall not have any type of lighted signal, lights, or illuminations unless required by applicable codes, local codes or regulations, or state and federal laws and regulations or as permitted by the City.

(4) Ground-mounted small wireless facilities shall be located within a ten (10) foot radius of the structure or utility pole for the collocated small wireless facility and, if possible, in areas with existing foliage or another aesthetic features to obscure the view of the ground-mounted small wireless facility. The ground-mounted small wireless facility shall be designed to appear similar to other at-grade facilities in the same public rights-of-way and may be further concealed with additional plantings. Any additional plantings proposed pursuant to this subsection shall be approved by the City and be maintained by the registrant pursuant to a landscape maintenance agreement.

(5) The antennas and related equipment shall be in a color that will provide the most camouflage, as determined by the City Manager or designee, or designee. Ground based small

wireless facilities shall be painted forest green, unless determined otherwise by the City Manager, or designee. When on a black pole, wireless facilities shall be painted black, unless determined otherwise by the City Manager, or designee.

(6) A new utility pole that replaces an existing utility pole shall be of substantially similar design, material, and color as the existing utility pole.

(b) Waiver. The City's design standards set forth in subsection (a), may be waived by the Planning Manager or designee upon a showing by the applicant that the design standards are not reasonably compatible for the particular location of a small wireless facility or that the design standards impose an excessive expense for a small wireless facility. The waiver shall be granted or denied by the Planning Manager or designee within 45 days after the date the request is received by the City.

(c) Zoning and Land Use Regulations. Unless otherwise provided herein, all communications facilities shall be subject to the City's zoning and land use regulations, including the performance, construction and design standards set forth in Section 4.20 of the Land Development Code.

(d) Height Requirements.

(1) Utility Poles and Wireless Support Structures. The height of a new utility pole or wireless support structure installed in conjunction with the collocation of a small wireless facility within the public rights-of-way shall be no greater than:

a. Unless waived by the Planning Manager or designee, the height for a new utility pole installed in conjunction with the collocation of a small wireless facility is limited to the tallest existing utility pole as of July 1, 2017, located in the same public right-of-way, other than a utility pole for which a waiver has previously been granted, measured from grade in place, within 500 feet of the proposed location of the small wireless facility.

b. If there is no utility pole within 500 feet, the height of the utility pole shall not exceed 50 feet.

(2) Small Wireless Facilities. The height of a small wireless facility, including any attached antennas, shall not exceed ten feet above the utility pole or wireless support structure upon which the small wireless facility is to be collocated. Small wireless facilities are prohibited on utility poles, wireless support structures, or similar structures 15 feet or less in height unless waived upon a showing of good cause by the Planning Manager or designee.

(e) Collocation of Small Wireless Facilities on City Utility Poles.

(1) Notwithstanding anything to the contrary contained herein, the City may reserve space on City utility poles for future public safety uses. If replacement of a City utility pole is necessary to accommodate the collocation of the small wireless facility and the future public safety use,

the pole replacement is subject to the make-ready provisions of this article and the replaced pole shall accommodate the future public safety use.

(2) The City shall not enter into an exclusive arrangement with any person for the right to attach equipment to City utility poles.

(3) The City hereby levies, establishes, and sets an annual rate that shall be paid by all those applicants who file an application to collocate small wireless facilities on City utility poles in the amount of \$150 per pole per year. The initial payment shall be made as a condition of the granting of the permit, with remaining annual payments to be made in all subsequent years on the same date.

(4) For a City utility pole that supports an aerial facility used to provide communications services or electric service by another, the parties shall comply with the process for make-ready work under 47 U.S.C. s. 224 and implementing regulations. The good faith estimate of the person owning or controlling the pole for any make-ready work necessary to enable the pole to support the requested collocation must include pole replacement if necessary.

(5) For a City utility pole that does not support an aerial facility used to provide communications services or electric service by another, the City shall provide a good faith estimate for any make-ready work necessary to enable the pole to support the requested collocation, including necessary pole replacement, within 60 days after receipt of a complete application. Make-ready work, including any pole replacement, must be completed within 60 days after written acceptance of the good faith estimate by the applicant. Alternatively, the City may require the applicant seeking to collocate a small wireless facility to provide a make-ready estimate at the applicant's expense for the work necessary to support the small wireless facility, including pole replacement, and perform the make-ready work.

(6) If pole replacement is required by the City, the scope of the make-ready estimate is limited to the design, fabrication, and installation of a utility pole that is substantially similar in color and composition. The City may not condition or restrict the manner in which the applicant obtains, develops, or provides the estimate or conducts the make-ready work, subject to usual construction restoration standards for work in the right-of-way. The replaced or altered utility pole shall remain the property of the City.

(7) The City may not require more make-ready work than is required to meet applicable codes or industry standards. Fees for make-ready work may not include costs related to preexisting damage or prior noncompliance. Fees for make-ready work, including any pole replacement, may not exceed actual costs or the amount charged to communications services providers other than wireless services providers for similar work and may not include any consultant fee or expense.

(f) *Placement of Utility Poles By Wireless Infrastructure Providers In the Public Rights-of-Way In Support of Collocation of Small Wireless Facilities.* A wireless infrastructure provider may apply

to the City to place utility poles in the public rights-of-way to support the collocation of small wireless facilities. The application must include an attestation that small wireless facilities will be collocated on the utility pole or structure and will be used by a wireless services provider to provide service within 9 months after the date the application is approved by the City. The City shall accept and process the application in accordance with any applicable codes and other local codes governing the placement of utility poles in the public rights-of-way, including but not limited to the provisions applicable to wireless communication facilities set forth in Section 4.20 of the Land Development Code, and any applicable requirements set forth in the City Code, as amended from time to time.

(g) *Prohibited Collocations, Attachments, Installations, and Services Not Authorized.*

(1) This article does not authorize the following:

(a) The collocation or attachment of wireless facilities, including any antenna, micro wireless facility, or small wireless facility, on a privately-owned utility pole, a utility pole owned by an electric cooperative or a municipal electric utility, a privately owned wireless support structure, or other private property without the consent of the property owner.

(b) The provision of any voice, data, or video services or the installation, placement, maintenance, or operation of any communications facilities other than small wireless facilities in the public rights-of-way.

(c) The collocation of small wireless facilities or micro wireless facilities on a City utility pole, or the erection of a wireless support structure in a location subject to covenants, conditions, restrictions, articles of incorporation, and bylaws of a homeowners' association.

(2) This subsection does not affect provisions contained in this article and Section 337.401(6), F.S. relating to pass-through providers.

(3) This subsection does not apply to the installation, placement, maintenance, or replacement of micro wireless facilities on any existing and duly authorized aerial communications facilities, provided that once aerial facilities are converted to underground facilities, any such collocation or construction shall be only as provided by the City's underground utilities ordinance.

Sec. 42-112. – General Conditions.

As a condition of allowing the placement or maintenance of any communications facility in the public rights-of-way, and under additional authority granted pursuant to Chapter 337, F.S., the City hereby imposes the following rules, regulations and general conditions. Unless otherwise provided in this Article, these rules, regulations and general conditions shall apply to all communications services providers, including those that are pass-through providers irrespective of whether they place and maintain only conduit, dark fiber or pass-through facilities.

- (a) Compliance with Laws. A communications services provider shall at all times comply with and abide by all applicable provisions of state and federal law and City ordinances, codes and regulations in placing or maintaining a communications facility in the public rights-of-way. Except as provided herein, the placement of a communications facility anywhere in the corporate limits of the City shall in all cases be subject to the City's land use regulations, including those set forth in Section 4.20, of the City Land Development Code. The burden of proof shall at all times be on the communications services provider to establish compliance with requirements under this article and state and federal law.
- (b) Due Care. A communications services provider shall use and exercise due caution, care and skill in performing work in the public rights-of-way and shall take all reasonable steps to safeguard work site areas.
- (c) Power to Restrict Area. To the extent not otherwise prohibited by state or federal law, the City shall have the power to prohibit or limit the placement of new or additional communications facilities within a particular area of the public rights-of way and deny the issuance of a permit.
- (d) Responsibility for Contractors. Every communications services provider that is registered with the City shall be liable for the actions of contractor(s) hired by them to perform the placement or maintenance of facilities in the public rights-of-way and shall be responsible for making sure that such contractor meets and complies fully with the rules, regulations and general conditions set forth in this Article.
- (e) Provision of As-Builts. Within 45 days after completion of any placement or maintenance of a communications facility in the public rights-of-way, the communications services provider shall provide the City with as-builts showing the final location of such facility in the public rights-of-way.
- (f) Production and Filing of As-Builts. Every communications services provider that is registered with the City shall produce and keep on file at its principal place of business an accurate and complete set of as-builts of all facilities placed and maintained in the public rights-of-way. The location and identification of facilities and the production of as-builts shall be at the sole expense of the communications services provider. Within 30 days of any written request by the Planning Manager or designee, the communications services provider must provide to the City, at no cost, copies of complete sets of as-builts for the indicated public rights-of-way. The failure of the communications services provider to produce, keep on file, or provide to the City as-builts as required under this article is sufficient grounds for the City to deny the issuance of permits in the future.
- (g) Removal of Facilities Placed Without Permit. Any communications facility placed in the public rights-of-way by the communications services provider without first having obtained the required permit shall be removed within 30 days of written notice by the City to remove the same and in default of compliance with such notice, such facilities may be removed by order of the Planning Manager or designee and the cost of removal shall be borne and paid by the

communications services provider upon demand.

- (h) *Underground.* A wireless provider shall, in relation to a small wireless facility, utility pole, or wireless support structure in the public rights-of-way, comply with any undergrounding requirements of the City that prohibit above-ground structures in public rights-of-way. Any such requirements may be waived by the City. All communications facilities shall have consistent alignment parallel with the edge of pavement, and a thirty-six inch (36") depth of cover for, and two feet (2') of horizontal clearance from, other underground utilities and their appurtenances. Where approved by the Planning Manager or designee, facilities to be placed in the street shall be laid according to the permanent grade of the street and at a depth below the surface of the permanent grade as determined by the Planning Manager or designee.
- (i) *Above-Ground Approval.* Attachment to any utility pole or other above-ground structure must be pursuant to a valid and effective pole attachment agreement or similar instrument.
- (j) *Undergrounding of Electric Utility Facilities.* The communications services provider or wireless infrastructure provider must, at the time electric utility facilities or other communications facilities are placed underground or are required by the City to be placed underground, concurrently place its communications facilities underground without cost to the City.
- (k) *Placement and Maintenance Standards.* The placement or maintenance of communications facilities in the public rights-of-way shall be performed in accordance with standards and requirements of the following, as is applicable and as each is in force at the time of the respective placement or maintenance of a communications system or facility:

  - (1) the Florida Department of Transportation Utilities Accommodation Guide;
  - (2) the State of Florida Manual of Uniform Minimum Standards for Design Construction and Maintenance for Streets and Highways;
  - (3) the Trench Safety Act (Chapter 553, F.S.);
  - (4) the Underground Facility Damage Prevention and Safety Act (Chapter 556, F.S.);
  - (5) all applicable structural requirements with respect to wind speed under the Florida Building Code;
  - (6) the National Electrical Code or the ANSI National Electrical Safety Code; and
  - (7) the "Safety Rules for the Installation and Maintenance of Electrical Supply and Communication Lines" established by the Department of Commerce, Bureau of Standards of the United States.
- (l) *Sunshine State One-Call.* Every communications services provider shall utilize, and if permissible, maintain membership in the utility notification one call system administered by Sunshine State One-Call of Florida, Inc.



- (m) *Safety and Minimal Interference.* All placement and maintenance of communication facilities in the public rights-of-way shall be subject to the City Code and other regulations of the City, and shall be performed with the least possible interference with the use and appearance of the public rights-of-way and the rights and reasonable convenience of the property owners who abut or adjoin the public rights-of-way, and in compliance with the rules and regulations of the Florida Department of Transportation. The communications services provider shall at all times employ reasonable care and use commonly accepted methods and devices for preventing failures and accidents which are likely to cause damage or injury or be a nuisance to the public. Suitable barricades, flags, lights, flares, or other devices shall be used at such times and places as are reasonably required for the safety of all members of the public. All placement and maintenance shall be done in such a manner as to minimize to the greatest extent any interference with the usual travel on such public rights-of-way. The use of trenchless technology (i.e., microtunneling and horizontal directional drilling techniques) for the installation of communications facilities in the public rights-of-way, as well as joint trenching or the collocation of facilities in existing conduit is strongly encouraged, and should be employed wherever and whenever feasible.
- (n) *Correction of Harmful Conditions.* If, at any time, the City or other authority of competent jurisdiction reasonably determines that any communications facility is, or has caused a condition that is harmful to the health, safety or general welfare of any person, then the communications services provider shall, at its own expense, promptly correct or eliminate all such facilities and conditions. In an emergency, as determined by the Planning Manager or designee, when the communications services provider is not immediately available or is unable to provide the necessary immediate repairs to any communications facility that is damaged or malfunctioning, or has caused a sunken area or other condition and, in the Planning Manager or designee's sole discretion, is deemed a threat to public safety, then the City, when apprised of such an emergency, shall have the right to remove, make repairs to or eliminate same with the total cost being charged to and paid for by the communications services provider upon demand.
- (o) *Remedy of Hazardous Conditions.* If, at any time, a condition exists that the City or other authority of competent jurisdiction reasonably determines is an emergency that is potentially hazardous or life threatening to any person or is a threat to the health or safety of the general public, and to remedy such condition the City or other authority of competent jurisdiction reasonably determines that a communications services provider must temporarily relocate or temporarily shut off service or transmissions through a specific facility, then the City, as an appropriate exercise of its police powers, may order the communications services provider to immediately perform such temporary relocation or shut off until the condition has been remedied, and to do so at its own expense and without liability to or recourse against the City. In such an emergency, when the communications services provider is not immediately available or is unable to provide the necessary immediate relocation or shut off of the specific communications facility, then the City shall have the right to perform, or cause to be performed, such temporary relocation or shut off until the condition has been remedied with the total cost

being charged to and paid for by the communications services provider upon demand.

(p) *Interference with Other Facilities.* A communications services provider shall not, in violation of any applicable laws or regulatory standards, design, place or maintain its communications facilities in a manner that will interfere with the signals or facilities of any municipal or county police, fire or rescue department, the facilities of any public utility, or the communications facilities of another communications service provider, including any cable service provider.

(q) *Relocation or Removal of Facilities.*

(1) The grant of a permit under this article shall not limit the authority and discretion of the City to regulate and control the public rights-of-way, and the city may at any time require the removal or relocation of a wireless or other communications facility within the rights-of-way in the interests of the public welfare, health, or safety, or as otherwise authorized by law. The registrant must remove its wireless facilities within thirty (30) days notice that the City will remove a utility pole.

(2) Removal or relocation at the direction of the City of a registrant's communications facility in public rights-of-way shall be governed by applicable requirements of Sections 337.403 and 337.404, F.S. as amended, in addition to any other applicable City regulations or provisions of law. Unless otherwise provided by law, this City Code, or an agreement, a registrant shall bear all costs of any removal or relocation of its facilities.

(r) *Temporary Raising or Lowering of Facilities.* A communications services provider, upon request of any person holding a validly issued building or moving permit from the City to temporarily encroach on or perform moving operations in or across the public rights-of-way, shall temporarily raise or lower its communications facilities to accommodate such temporary encroachment or move. The expense of such temporary raising or lowering of facilities shall be paid by the person requesting the same, and the communications services provider shall have the authority to require such payment in advance. The communications services provider shall be given not less than 20 days advance written notice from such person to arrange for the temporary relocation, which notice must detail the time and location of the permitted activity, and not less than 24 hours advance notice from the permit holder advising of the actual operation. The City is not subject to, nor shall it be liable for, any such expense or notice requirement for the moving of houses or structures unless performed by the City or its contractors.

(s) *Coordination.* In an effort to minimize the adverse impact on the public rights-of-way and other municipal improvements, a communications services provider may be required by the Planning Manager or designee to coordinate the placement or maintenance of its facilities with any work, construction, installation in or repairs of the public rights-of-way or other facilities that is occurring or is scheduled to occur within a reasonable time from application for a permit as determined by the Planning Manager or designee. Every communications services provider shall make space in its trench and/or conduit within the public rights-of-way available to other

providers consistent with the federal requirements of 47 U.S.C. 224. Every communications services provider shall utilize existing conduits, pathways and other facilities whenever possible, and shall not place or maintain any new, different, or additional poles, conduits, pathways or other facilities, whether in the public rights-of-way or on privately-owned property, until written approval is obtained from the City or other appropriate governmental authority, and, where applicable, from the private property owner.

(t) *Collocation and Joint Use.* A communications services provider, in an effort to minimize the adverse impact on the useful life of the public rights-of-way, shall, whenever possible, enter into joint use agreements with the City and other parties who have registered with, or who are expressly authorized by, the City to use its public rights-of-way; provided that the terms of such agreements are satisfactory to the communications services provider. Nothing herein shall mandate that the communications services provider enter into joint-use agreements with parties other than the City. However, prior to placement of any new or additional underground conduit in the public rights-of-way, a communications services provider is required to certify in writing to the Planning Manager or designee that it has made appropriate inquiry to all existing utilities and other entities possessing a right to occupy the public rights-of-way as to the availability of existing or planned conduit that the particular communications services provider could reasonably utilize to meet its needs, and that no such conduit is available or planned at a reasonable cost by any other entity on the time schedule reasonably needed. The communications services provider shall not be permitted to perform any placement or maintenance of facilities in those segments of the public rights-of-way where there exists vacant or available conduit, dark fiber or surplus fiber owned by the City or another governmental body which is, or through a reasonable amount of effort and expense, can be made compatible with, the communications services provider's system or network. Under such circumstances the communications services provider shall have the opportunity to enter into a use agreement or lease arrangement with the City at or below reasonable and prevailing market rates for such conduit or fiber or, where owned by another governmental body, shall, in good faith, first exhaust all means of obtaining use of such conduit or fiber before applying for a permit from the City.

(u) *Maintenance-of-Traffic.* In the event that placement or maintenance of communications facilities conducted by the communications services provider requires streets or traffic lanes to be closed or obstructed, the communications services provider must, pursuant to the requirements of existing or subsequently enacted City ordinances, obtain all necessary permits from City, and shall obtain approval of its maintenance-of-traffic plan from the Planning Manager or designee.

(v) *Restoration of the Public Rights-of-Way.* After completion of any placement or maintenance of a communications facility in the public rights-of-way or each phase thereof, the communications services provider shall, at its own expense and in a manner reasonably acceptable to the City, restore without delay the public rights-of-way so disturbed to its original condition immediately prior to the placement or maintenance work. If the communications services provider fails to

make such restoration within 30 days following the completion of such placement or maintenance, the City may perform such restoration and charge the costs of the restoration to the communications services provider in accordance with Section 337.402, F.S., as it may be amended. The communications services provider shall, to the satisfaction of the Planning Manager or designee, maintain and correct any restorations made pursuant hereto for a period of 12 months following the date of its completion. Failure to comply with this subsection shall be deemed sufficient grounds for denial of any future permits for the placement or maintenance of communications facilities.

(w) *Disruption or Destruction of Other Facilities or Property.* A communications services provider shall not knowingly place or maintain any facility in a manner that shall in any way disrupt, displace, damage or destroy any sewer line, gas line, water main, pipe, conduit, wires, fiber-optics or other facilities, or property belonging to the City or any other person lawfully occupying the public rights-of-way, without first obtaining the consent of the City. The communications services provider shall bear all responsibility and costs for any such conduct where City consent has not been obtained, and shall pay such costs upon demand.

(x) *Preservation of Public Rights-of-Way for Planned Public Projects.* To the extent not otherwise prohibited by state or federal law, the City shall have the power to prohibit or limit the placement of new or additional communications facilities within a particular area of Public rights-of-way and may consider, among other things and without limitation, the sufficiency of space to accommodate all of the present communications facilities and pending applications to place and maintain facilities in that area of the Public rights-of-way, the sufficiency of space to accommodate City announced plans for public improvements or projects that the City determines are in the public interest, the impact on traffic and traffic safety, and the impact upon existing facilities in the public rights-of-way.

(y) *City Not Liable.* Except for acts of willful misconduct or gross negligence and to the extent permitted by applicable law, neither the City nor its officials, boards, commissions, consultants, agents, employees or independent contractors shall have any liability to the communications services provider for any claims for any damages, costs, expenses or losses resulting from the City's breakage, removal, alteration or relocation of any facilities of any communications services provider which arose out of or in connection with any emergency or disaster situation, or was, in the sole discretion of the Planning Manager or designee, deemed necessary to facilitate any public works project, public improvement, alteration of a City structure, change in the grade or line of any public rights-of-way, or the elimination, abandonment or closure of any public rights-of-way, or was found by City Council to be in the best interest of the health, safety or general welfare of the public; nor shall any charge be made by the communications services provider against the City for any related damages, costs, expenses or losses.

(z) *No Exemption from Permits.* Except as provided herein, nothing in this article shall exempt any communications services provider from obtaining permits for work done within the public rights-of-way.

- (aa) Subject to Police Powers. The rights of the communications services provider shall be subject to all lawful exercise of police power by the City, and to such other reasonable regulation of the public rights-of-way as the City shall hereafter by resolution or ordinance provide in the interest of the health, safety and general welfare of the public. Any inconsistency or ambiguity between the provisions of this article and any lawful exercise of the City's police power shall be resolved in favor of the latter.
- (bb) City Inspection. The City shall have the right to make such inspections of a communications system or facilities placed or maintained in the public rights-of-way as it finds necessary to ensure compliance with this article. This article shall not be construed to create or hold the City responsible or liable for any damage to persons or property by reason of any inspection by the City of the placement or maintenance of a communications system or facility as authorized herein or failure by the City to so inspect.
- (cc) Access to Manholes. The City, in the proper exercise of its municipal powers and duties with respect to the public rights-of-way, shall have access at any time to all hand holes and manholes in the City belonging to a communications services provider. Before accessing any manhole, the City will make a reasonable good faith effort to provide the communications services provider prior notice to afford an opportunity to have trained personnel present, unless determined by the City to be an emergency situation.
- (dd) Compatibility, Capacity and Interference Issues. To properly manage and control the use of the public rights-of-way, and to protect the health, safety and general welfare of the public, the City, in its legislative and regulatory role, shall be the final authority on permitting a communications system or facility to be placed in the public rights-of-way and shall exercise such authority in a non-discriminatory manner. It shall be in the sole discretion of the City Attorney whether an easement is compatible with or allows for its use by a communications system or facility. It shall be in the sole discretion of the Planning Manager or designee, based on the nature, design, size, configuration or proposed location of any communications system or facility, whether there is sufficient capacity in a particular section of the public rights-of-way or whether such system or facility will interfere with the facilities or equipment of any municipality, county, public utility, cable operator, or other communications service provider.
- (ee) No Warranty of Fitness or Suitability. The City makes no express or implied warranties or representations regarding the fitness, suitability, or availability of the public rights-of-way for any communications system or facility or its right to authorize the placement or maintenance of any communications system or facility in the public rights-of-way. Any performance of work, costs incurred or services rendered by a communications services provider shall be at such provider's sole risk. Nothing in this article shall affect the City's authority to acquire or add public rights-of-way, or to vacate or abandon public rights-of-way as provided for in the City Code or applicable law. The City makes no express or implied warranties or representations regarding the availability of any acquired, added, vacated or abandoned public rights-of-way for a communications system or facility.

(gg) Taxes. A registrant shall pay any personal property or other taxes or assessments that may be imposed on the registrant's small wireless facility, micro wireless facility, or utility pole for collocation of a small wireless facility placed or maintained in the public rights-of-way or on the City's property, including a City utility pole, as a result of registrant's collocation on a City utility pole. A registrant shall reimburse the City for taxes paid by the City as a result of registrant's facilities being placed or maintained in the public rights-of-way or on a City owned utility pole.

(hh) Tree Protection. Trees may not be damaged or removed during placement or maintenance of small wireless facilities, utility poles, or wireless support structures in the public rights-of-way. Tree removal is not permitted within the public rights-of-way to increase signal strength or provide a line-of-sight. Landscaping may only be damaged or removed pursuant to a City permit during placement or maintenance of small wireless facilities, utility poles, or wireless support structures. The City will require that any landscaping so removed be replaced in accordance with the approved restoration plan.

(ii) Airport Airspace. A structure granted a permit and installed pursuant to this article shall comply with Chapter 333, F.S., and federal regulations pertaining to airport airspace protections

Sec. 42-~~107~~113. - Suspension of permits.

The City may suspend a permit for work in the public rights-of-way for one or more of the following reasons subject to section 42-~~108~~114 of this article:

- (1) Violation of permit conditions, including conditions set forth in the permit, this article or other applicable City ordinances, codes or regulations governing placement or maintenance of communications facilities in public rights-of-way;
- (2) Misrepresentation or fraud by registrant in a registration or permit application to the City; or
- (3) Failure to properly renew or ineffectiveness of registration.
- (4) Failure to relocate or remove facilities as may be lawfully required by the City.

The City shall provide notice and an opportunity to cure any violation of (1) through (4) above, each of which shall be reasonable under the circumstances.

Sec. 42-~~108~~114. - Appeals.

Final, written decisions of the City official Manager or designee suspending or denying a permit, denying an application for a registration or denying an application for renewal of a registration are subject to appeal. An appeal must be filed with the City Manager or designee within 30 days of the date of the final, written decisions to be appealed. Any appeal not timely filed as set forth above shall be waived. The City Council shall hear the appeal as set forth in the City Code. The hearing shall occur within 30 days of the receipt of the appeal, unless waived by the registrant, and a written decision shall be rendered within 20 days of the hearing. Upon correction of the grounds that gave rise to a suspension or denial, the suspension or denial shall be lifted (the same does not apply to the revocation of a permit).

Sec. 42-115. - Duty to Notify City of Resellers; Conditional Use of Public Rights-of-Way.

Within 30 days of any registered communications services provider using its facilities to carry the communication services of any reseller, such communications services provider shall notify the City of the name and address of such reseller. A reseller's lease, interconnection or other use of facilities belonging to a communications services provider duly registered in accordance with Section 42-105 and properly permitted to place or maintain its facilities in the public rights-of-way, does not, and shall not, afford such reseller any right, claim or cause of action to impede the lawful exercise of the City's rights or police powers, including, but not limited to, requiring the registered communications services provider to remove such facilities from the public rights-of-way.

~~Sec. 42-109. - Involuntary termination of registration.~~

~~(a) - The City may terminate a registration if:~~

~~(1) - A federal or Florida authority suspends, denies, or revokes a registrant's certification or license to provide communications services;~~

~~(2) - The registrant's placement or maintenance of a communications facility in the public rights-of-way presents an extraordinary danger to the general public or other users of the public rights-of-way and the registrant fails to remedy the danger promptly after receipt of written notice; or~~

~~(3) - The registrant ceases to use all of its communications facilities in public rights-of-way and has not complied with section 42-116 of this article.~~

~~(b) - Prior to termination, the registrant shall be notified by the City official with a written notice setting forth all matters pertinent to the proposed termination action, including which of (1) through (3) above is applicable as the reason therefore, and describing the proposed action of the City with respect thereto. The registrant shall have 60 days after receipt of such notice within which to address or eliminate the reason or within which to present a plan, satisfactory to the City official, to accomplish the same. If the plan is rejected, the City official shall provide written notice of such rejection to the registrant and shall make a recommendation to the City Council regarding a decision as to termination of registration. A decision by a City to terminate a registration may only be accomplished by an action of the City Council. A registrant shall be notified by written notice of any decision by the City Council to terminate its registration. Such written notice shall be sent within seven days after the decision.~~

~~(c) - In the event of termination, the former registrant shall:~~

~~(1) - Notify the City of the assumption or anticipated assumption by another registrant of ownership of the registrant's communications facilities in public rights-of-way; or~~

~~(2) - Provide the City with an acceptable plan for disposition of its communications facilities in public rights-of-way. If a registrant fails to comply with this subsection (c), which determination of noncompliance is subject to appeal as provided in section 42-108, the City may exercise any remedies or rights it has at law or in equity, including but not limited to taking possession of the facilities where another person has not assumed the ownership or physical control of the facilities or requiring the registrant within 90 days of the termination, or such longer period as may be agreed to by the registrant, to remove some or all of the facilities from~~

~~the public rights-of-way and restore the public rights-of-way to its original condition before the removal.~~

- ~~(d) In any event, a terminated registrant shall take such steps as are necessary to render safe every portion of the communications facilities remaining in the public rights-of-way of the City.~~
- ~~(e) In the event of termination of a registration, this section does not authorize the City to cause the removal of communications facilities used to provide another service for which the registrant or another person who owns or exercises physical control over the facilities holds a valid certification or license with the governing federal or state agency, if required for provision of such service, and is registered with the City, if required.~~

Sec. 42-~~116110~~. - Existing communications facilities in public rights-of-way.

~~A~~ ~~C~~communications services provider with an existing communications facility in the public rights-of-way of the City has 60 days from the effective date of this article (~~June 19, 2001~~) to comply with the terms of this article, including, but not limited to, registration, or be in violation thereof.

Sec. 42-~~117111~~. - Insurance.

- (a) A registrant shall provide, pay for and maintain, ~~satisfactory to the City,~~ the following types of insurance described herein. All insurance shall be from responsible companies admitted and duly authorized to do business in the State of Florida and shall have assigned by A.M. Best Company, a minimum of Financial Strength Rating of "A" and a minimum Financial Size Category of "IX" (i.e., a size of \$250,000,000 to \$500,000,000 based on capital, surplus, and conditional reserve funds) having a rating reasonably acceptable to the City. All liability policies shall provide that the City, and its council members, officers, and employees, are named as is an additional insureds with respect to any covered liability arising out of or relating to the placement or maintenance of communications facilities in the public rights-of-way or other as to the activities under this article. The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates must be signed by the authorized representative of the insurance company and shall be filed and maintained with the City annually. ~~30 days advance written notice by registered, certified or regular mail or facsimile as determined by the City must be given to the City of any cancellation, intent not to renew, or reduction in the policy coverages.~~ The insurance requirements may be satisfied by evidence of self-insurance or other types of insurance acceptable to the City.
- (b) The limits of coverage of insurance required shall be not less than the following:
  - (1) ~~Worker's compensation and employer's liability insurance and Florida Statutory requirements.~~  
Employer's liability:  
\$500,000.00 limit per each accident.  
\$500,000.00 limit per each employee.
  - (2) Comprehensive general liability:  
Bodily injury and property damage—\$5,000,000.00 combined single limit each occurrence.



(3) Automobile liability;

Bodily injury and property damage—\$51,000,000.00 combined single limit each accident.

(4) Worker's compensation:

Florida statutory requirements.

(c) The required coverages must be evidenced by properly executed certificates of insurance forms. The certificates, including all endorsements and riders, must be signed by the authorized representative of the insurance company and must be filed and maintained with the City annually. Thirty (30) days advance written notice by registered, certified or regular mail or facsimile, as determined by the City, must be given to the City of any cancellation, intent not to renew, or reduction in the policy coverages. The certificates of insurance must indicate the following:

(1) the policy number; name of insurance company; name and address of the agent or authorized representative; name and address of insured; that the policy coverage "pertains the requirements of Section 42-117 of the City of Palm Coast Communications Right-of-Way Ordinance;" policy expiration date; and specific coverage amounts; and

(2) any applicable deductibles or self-insured retentions; and

(3) that the City, its council members, officers and employees are additional insureds; and

(4) that the City must receive thirty (30) days' advance written notice of cancellation, intent not to renew or reduction in coverage; and

(5) that the commercial general liability insurance policy is primary as to any other valid or collectible insurance that the City may possess, including any self-insured retentions the City may have; and any other insurance the City does possess shall be considered excess insurance only and shall not be required to contribute with this insurance.

(d) Under extraordinary circumstances, a registrant may satisfy the insurance requirements of this article by providing documentation of self-insurance that, in the sole discretion of the City Manager or designee, demonstrates incontrovertibly the adequacy to defend and cover claims of any nature that might arise from the placement and maintenance of facilities in the public rights-of-way. The registrant must be authorized as a self-insurer by the Department of Insurance under the laws of the State of Florida.

Sec. 42-~~112~~118. - Indemnification.

(a) A registrant shall, at its sole cost and expense, indemnify, hold harmless, and defend the City, its officials, boards, members, agents, and employees, against any and all claims, suits, causes of action, proceedings, judgments for damages or equitable relief, and costs and expenses incurred by the City arising out of or in connection with the placement or maintenance of its communications system or facilities in public rights-of-way by the registrant, or its agent or hired contractor, regardless of whether the act or omission complained of is authorized, allowed or prohibited by this article, provided, however, that a registrant's obligation hereunder shall not extend to any claims caused by the negligence, gross negligence or wanton or willful acts of the City. This indemnification provision includes, but is not limited to, such damages and penalties arising out of claims (1) by any person whatsoever on account of (i) bodily injury to a

person or persons, (ii) death of a person or persons; or (iii) property damage, where any of the foregoing is occasioned by the operations of the registrant, or alleged to have been so caused or occurred; or (2) involving the registrant's violation of any easement or private property rights. the City's reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings. City agrees to notify the registrant, in writing, within a reasonable time of City receiving notice, of any issue it determines may require indemnification. Nothing in this section shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own cost if in the City's reasonable belief there exists or may exist a conflict, potential conflict or appearance of a conflict. Nothing contained in this section shall be construed or interpreted as denying to either party any remedy or defense available to such party under the laws of the State of Florida; or as a waiver of sovereign immunity beyond the waiver provided in F.S. § 768.28, (2000), as it may be amended.

- (b) Indemnified costs and expenses shall include, but not be limited to, all out-of-pocket expenses and reasonable attorneys' fees incurred in defending against any such claim, suit or proceedings, and shall also include the reasonable value of any services rendered by the City Attorney, or any consultants, agents, and employees of the City. The City agrees to notify the registrant, in writing, within a reasonable time of the City receiving notice of any issue it determines may require indemnification.
- (c) Nothing in this section shall prohibit the City from participating in the defense of any litigation by its own counsel and at its own cost if, in the City's reasonable belief, there exists or may exist a conflict, potential conflict, or appearance of conflict.
- (d) Nothing in this section shall be construed or interpreted as (a) denying to either party any remedy or defense available to such party under the laws of the State of Florida; or (b) as a waiver of sovereign immunity beyond the waiver provided in Section 768.28, F.S., as it may be amended.
- (be) The indemnification requirements shall survive and be in effect after the termination or cancellation of a registration.

Sec. 42-113119. – Maintenance Bond. A maintenance surety for the communications system shall be submitted upon release of the performance surety. The maintenance surety provides a guarantee that the improvements were completed without defects in workmanship or materials, and guarantees timely removal. The expiration date shall be the date of the eventual removal of the equipment from the right of way.

(a) Maintenance surety amount. The amount of the maintenance surety shall be based on 20 percent of the actual/present day costs of construction, as certified under seal by the project engineer of record, and subject to approval by the Planning Manager.

(b) Maintenance surety release. The maintenance surety may be released by the Planning Manager upon the eventual removal of the improvements from the right of way. This action must be initiated, in writing, by the registrant.

Construction bond.

(a) ~~— Prior to issuing a permit where the work under the permit will require restoration of public rights-of-way, a City may require a construction bond to secure the restoration of the public rights-of-way. Notwithstanding the foregoing, a construction bond hereunder may only be required to the extent that the cost of the restoration exceeds the amount recoverable against the security Fund as provided in section 42-114.~~

(b) ~~— The rights reserved by the City with respect to any construction bond established pursuant to this section are in addition to all other rights and remedies the City may have under this article, or at law or equity.~~

(c) ~~— The rights reserved to the City under this section are in addition to all other rights of the City, whether reserved in this article, or authorized by other law, and no action, proceeding or exercise of a right with respect to the construction bond will affect any other right the City may have.~~

Sec. ~~42-120~~114. - Security fund.

At or prior to the time of registration, ~~a registrant receives its first permit to place or maintain a communications facility in public rights-of-way~~ after the effective date of this article, the registrant must ~~may be required to~~ file with the City, for City approval, an annual bond, cash deposit or irrevocable letter of credit in the sum of \$25,000.00 having as a surety a company qualified to do business in the State of Florida, and acceptable to the City, which shall be referred to as the "security fund". The security fund shall be maintained from such time through the earlier of:

(1) Transfer, sale, assignment or removal of all communications facilities in public rights-of-way; or

(2) 12 months after the termination or cancellation of any registration. The security fund shall be conditioned on the full and faithful performance by the registrant of all requirements, duties and obligations imposed upon registrant by the provisions of this article. The security fund shall be furnished annually or as frequently as necessary to provide a continuing guarantee of the registrant's full and faithful performance at all times. In the event a registrant fails to perform its duties and obligations imposed upon the registrant by the provisions of this article, subject to section ~~42-115~~122 of this article, there shall be recoverable, jointly and severally from the principal and surety of the security fund, any damages or loss suffered by the City as a result, including the full amount of any compensation, indemnification or cost of removal, relocation or abandonment of any facilities of the registrant in public rights-of-way, plus a reasonable allowance for attorneys' fees, up to the full amount of the security fund. Notwithstanding the foregoing, the City may in its discretion not require a security fund or may accept a corporate guarantee of the registrant or its parent company.

Sec. ~~42-121~~. – Performance Bond.

(a) Before any registrant is permitted to begin the placement or maintenance of an initial build, any substantial rebuild, upgrade or extension of its communications system, or when construction plans show that there would be at least one thousand (1,000) feet of open trenching in the public rights-of-way at any given time, the registrant is required to obtain, pay for, and file with the City a performance bond. The performance bond must name the City as obligee and be in the face amount of Two Hundred Fifty Thousand Dollars (\$250,000) conditioned upon the full and faithful compliance by the registrant

with all requirements, duties and obligations imposed by the provisions of the City of Palm Coast Communications Rights-of-Way Ordinance, during, and through completion of, the placement or maintenance project. The performance bond shall be in a form acceptable to the City Attorney and must be issued by a surety having a rating reasonably acceptable to the Planning Manager or designee and authorized by the Florida Department of Insurance to issue performance bonds in the state of Florida.

(b) The performance bond must be issued as non-cancelable and be for a term consistent with the reasonably expected duration of the particular placement or maintenance project (including restoration and City inspection), but in no event less than eighteen (18) months. In the event the term of any performance bond expires, or is reasonably expected to expire, prior to the completion of such placement or maintenance project, including restoration and City inspection, the registrant shall immediately obtain, pay for, and file with the City a replacement bond.

(c) The City's requirement of a performance bond is not in lieu of any additional bonds that may be required under this article or through the permitting process. The City's right to recover under the performance bond shall be in addition to all other rights of the City, whether reserved in this article, or authorized by other law, and no action, proceeding or exercise of a right with respect to the performance bond will affect or preclude any other right the City may have. Any proceeds recovered under the performance bond may be used to reimburse the City for such additional expenses as may be incurred by the City as a result of the registrant's failure to comply with the responsibilities imposed by this article, including, but not limited to, attorney's fees and costs of any action or proceeding, and the cost of removal or abandonment of any property.

Sec. 42-122415. - Enforcement remedies.

(a) A communications services provider's failure to comply with provisions of this article shall constitute a violation of this article and shall subject the communications services provider to the code enforcement provisions and procedures as provided in Article IV, of Chapter 2 of the City's Code of Ordinances. In addition, violation of this article may be punishable as provided in Section 162.22, F.S.

(b) No provision of this article shall be deemed to bar the right of the City to seek or obtain judicial relief from a violation of any provisions of this article, the registration provisions, or any rule, regulation, or general condition provided for hereunder, whether administratively, judicially or both. Neither the existence of other remedies identified in this article nor the exercise thereof shall be deemed to bar or otherwise limit the right of the City to recover fines, penalties, or monetary damages (except where liquidated damages are otherwise prescribed) for such violation by the communications services provider. The remedies available to the City shall be cumulative and in addition to any other remedies provided by law or equity. The laws of the state of Florida shall govern with respect to any proceeding in law or equity pertaining to the enforcement of this article or any cause or action arising out of or in connection herewith.

(c) In any proceeding before the City Council where there exists an issue with respect to a communications services provider's performance of its obligations pursuant to this article, the

communications services provider shall be given the opportunity to provide such information as it may have concerning its compliance with the terms and conditions of this article. The City may find a communications services provider that does not demonstrate compliance with the terms and conditions of this article in default and apply any appropriate remedy or remedies as authorized by this article. In determining which remedy is appropriate, the City Council shall take into consideration the nature of the violation, the person bearing the impact of the violation, the nature of the remedy required in order to prevent further violations, and such other matters as the City Council determines are appropriate to the public interest.

(d) Failure of the City to enforce any requirements of this article shall not constitute a waiver of the City's right to enforce that violation or subsequent violations of the same type or to seek appropriate enforcement remedies.

Sec. 42-~~123116~~. - Abandonment of a communications facility.

- (a) Upon abandonment of a communications facility owned by a registrant in public rights-of-way, the registrant shall notify the City within 60 ~~90~~ days.
- (b) The City may direct the registrant by written notice to remove all or any portion of such abandoned facility at the registrant's sole expense if the City determines that the abandoned facility's presence interferes with the public health, safety or welfare, which shall include, but shall not be limited to, a determination that such facility:
  - (1) Compromises safety at any time for any public rights-of-way user; ~~or during construction or maintenance in public rights-of-way;~~
  - (2) Compromises safety of other users or persons performing construction or maintenance of facilities in the public rights-of-way;
  - ~~(3)~~ Prevents another person from locating facilities in the area of public rights-of-way where the abandoned facility is located when other alternative locations are not reasonably available; or
  - ~~(3)~~ Creates a maintenance condition that is disruptive to the public rights-of-way use.

In the event of ~~(23)~~, the City may require the third person to coordinate with the registrant that owns the existing facility for joint removal and placement, where agreed to by the registrant.

(c) In the event that the City does not direct the removal of the abandoned facility, the registrant, by its notice of abandonment to the City, shall be deemed to consent to the alteration or removal of all or any portion of the facility by the City or another person at such third party's cost.

(d) If the registrant fails to remove all or any portion of an abandoned facility as directed by the City within the time period specified in the written notice, which time period must be a reasonable time period as may be required by the City under the circumstances, the City may perform such removal and charge the cost of the removal against the registrant.

Sec. 42-~~124117~~. - Force majeure.

In the event a registrant's performance of or compliance with any of the provisions of this article is prevented by a cause or event not within the registrant's control, such inability to perform or comply shall be deemed excused and no penalties or sanctions shall be imposed as a result, provided, however, that such registrant uses all practicable means to expeditiously cure or correct any such inability to perform or comply. For purposes of this article, causes or events not within a registrant's control shall include, without limitation, acts of God, floods, earthquakes, landslides, hurricanes, fires and other natural disasters, acts of public enemies, riots or civil disturbances, sabotage, strikes and restraints imposed by order of a governmental agency or court. Causes or events within registrant's control, and thus not falling within this section, shall include, without limitation, registrant's financial inability to perform or comply, economic hardship, and misfeasance, malfeasance or nonfeasance by any of registrant's directors, officers, employees, contractors or agents.

Sec. 42-125. – Fees applicable to those not subject to Communications Services Tax.

While the Florida Legislature has prohibited municipalities from requiring providers of communications services who have registered with the Florida Department of Revenue from having to enter into franchise agreements or license arrangements as a condition to placing or maintaining communications facilities in public rights-of-way, the City expressly reserves the right to require the payment of consideration or regulatory fees by persons using or occupying the Public rights-of-way in other capacities. The City reserves the right to require such payments based on the type of user and to the extent as follows:

(a) Dealer. Except as provided in Subsection 42-112(t), a communications services provider who meets the definition of dealer as set forth in this article and who has registered in accordance with Section 42-105 is not required to enter into a franchise agreement or license arrangement with the City as a condition to placing or maintaining communications facilities in the public rights-of-way, nor is a dealer required to make payment of any franchise fees, license fees or other user fees to the City as consideration for the use or occupancy of the public rights-of-way for the provision of communication services.

(b) Pass-Through Provider and Pass-Through Facilities. A communications services provider who meets the definition of pass-through provider as set forth in this article and who is not subject to the City of Palm Coast's Local Communications Services Tax imposed pursuant to Sections 202.19 and 202.20, F.S., shall pay the City the maximum annual amount allowed under Section 337.401(6)(b), F.S., as amended. For purposes of calculating payments hereunder, each separate pole or tower installed or maintained by a pass-through provider for purposes of supporting Antennas for other over-the-air radio transmission or reception equipment in the public rights-of-way shall comprise a separate communications facility subject to assessment of a separate permit fee in the amount of five hundred dollars (\$500.00) per linear mile, or portion thereof, up to the maximum amount allowed under Section 337.401(6)(b), F.S., whichever is higher. The annual amount referred to above shall be due and payable on October 1 of every year beginning on October 1, 2017. Fees not paid within ten days after the due date shall bear interest at the rate of one percent per month from the date due until paid. The acceptance of any payment required hereunder by the City shall not be

construed as an acknowledgment that the amount paid is the correct amount due, nor shall such acceptance of payment be construed as a release of any claim which the City may have for additional sums due and payable or authorization to install any facilities in the public rights-of-way.

(c) Other Persons. All other persons, except government, are required to pay the City, as consideration for the use or occupancy of the public rights-of-way for the placement or maintenance of communications facilities, an amount based on and in accordance with Subsection 42-125(b) of the City Code.

(d) Government. A government is not required to pay the City consideration for the use or occupancy of the public rights-of-way for the placement or maintenance of communications facilities, unless such facilities are being used by such government or a communications services provider, including resellers, to offer or provide communication services other than for such government's internal non-commercial use, in which event the government, where not subject to the City of Palm Coast's Local Communications Services Tax imposed pursuant to Sections 202.19 and 202.20, F.S., is required to pay the City, as consideration for the use or occupancy of the Public rights-of-way by or through its facilities, an amount based on and in accordance with Subsection 42-125(b) of the City Code or such other amount or rate of compensation as mutually agreed to in writing by the Government and the City.

Sec. 42-~~126~~118. - Reservation of rights and remedies.

(a) The City hereby expressly reserves the following rights: ~~to amend this article as it shall find necessary in the lawful exercise of its police powers.~~

(1) To exercise its municipal home rule powers, now or hereafter, to the fullest extent allowed by law with regard to the access, use and regulation of the public rights-of-way.

(2) To amend this article as it shall find necessary in the lawful exercise of its municipal authority and police powers.

(3) To adopt or enact by resolution or ordinance, in addition to the provisions contained herein and in any existing applicable ordinances, such additional reasonable regulations as the City Council finds necessary in the exercise of the City's police powers.

(4) To exercise the power of eminent domain, consistent with applicable federal and state law, to acquire property that may include that property owned or leased by a communications services provider.

(5) As and when deemed necessary by the City Council to be in the interest of the City or its residents, to abandon portions of the public rights-of-way within the proper exercise of its municipal authority and without notice to or the consent of any communications services provider. The City shall not be responsible for any costs, damages, loss or other expense to the communications services provider as a result of the City's abandonment of any public rights-of-way.

(6) To place and maintain, and permit to be placed or maintained, sewer, gas, water, electric, storm drainage, communications, and other types of facilities, cables or conduit, and to do, and to permit to be done any underground and overhead installation or improvement that may be deemed necessary or proper by the City in the public rights-of-way occupied by any communications services provider.

(7) Without limitation, to alter, change, or cause to be changed, the grading, installation, relocation, or width of any public rights-of-way within the limits of the City and within said limits as same may from time to time be altered.

(8) To require a reseller to register in accordance with Section 42-105 to the extent such reseller wants the right to place or maintain communication facilities in the public rights-of-way. Any person using or leasing communication facilities owned by a registered communications services provider is not, therefore, entitled to any rights to place or maintain communications facilities in the public rights-of-way, unless such person themselves registers with the City.

- (b) This article shall be applicable to all communications facilities placed in the public rights-of-way on or after the effective date ~~(June 19, 2001)~~ of this article and shall apply to all existing communications facilities in the public rights-of-way prior to the effective date ~~(June 19, 2001)~~ of this article, to the full extent permitted by state and federal law.
- (c) The adoption of this article is not intended to affect any rights or defenses of the City or a communications service provider under any existing franchise, license or other agreements with a communications services provider.
- (d) Nothing in this article shall affect the remedies the City or the registrant has available under applicable law.
- (e) Any person who uses the communications facilities of a registrant, other than the registrant that owns the facilities, shall not be entitled to any rights to place or maintain such facilities in excess of the rights of the registrant that places or maintains the facilities.
- (f) If provisions of this article conflict with any other provision of the City Code of Ordinances, or the Land Development Code, the more restrictive provisions shall govern.

Sec. 42-127. - Special provisions for eligible facilities modifications.

Notwithstanding any other provisions of this article, the City shall not deny any eligible facilities request for a modification to an existing wireless tower or base station within public rights-of-way of the City which does not substantially change the physical dimensions of such tower or base station provided the procedure and requirements set forth in Section 4.20.12, of the Land Development Code, are satisfied. Except as may otherwise be provided in this article, and not withstanding any other provisions in the City Code, the provisions of Section 4.20.12 shall be the sole and exclusive procedure for review and approval of an eligible facilities request which the applicant asserts is subject to review under Section 6409(a) of the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") as interpreted by the FCC Acceleration of Broadband Deployment Report & Order dated October 21, 2014. To the extent that other provisions of the City Code establish a parallel process for review and approval of a project application for a proposed eligible facilities request, the provisions of Section 4.20.12 shall control. In the event that an application for a project includes a proposal to modify an eligible support structure,



and the applicant does not assert in the application that the proposal is subject to review under the Spectrum Act, such proposal shall not be subject to review under Section 4.20.12 and may be subject to review under other applicable provisions of the City Code.

Sec. 42-128. – Compliance with state and federal regulations; preemption.

In implementing this article and the provisions set forth herein, the City shall comply with applicable state and federal regulations, and the provisions of this article shall be given force to the maximum amount and greatest extent permissible under state and federal law. Except as authorized pursuant to state and federal law, in the event of any conflict between the terms of this section and state or federal law, state and federal law shall control. In the event any provision of this article is specifically preempted, or judicially determined to be preempted by state or federal law, then the preempted provision shall automatically be deemed null and void and the superseding provision of state or federal law shall prevail.

## City of Palm Coast, Florida Agenda Item

Agenda Date: 02/06/2018

<b>Department Item Key</b>	PARKS & RECREATION	<b>Amount Account #</b>	
<b>Subject</b>	RESOLUTION 2018-XX APPROVING AN UPDATED PARKS AND RECREATION FEE STRUCTURE.		
<b>Background :</b>			
<b><u>Update for the February 6, 2018 Business Meeting</u></b>			
This item was heard by City Council at their January 30, 2018 Workshop. There were no changes suggested to this item.			
<b><u>Update for January 30, 2018 Workshop:</u></b>			
City Council received a presentation on the proposed new parks and recreation fees at the November 28, 2017 Workshop. At that time, Parks and Recreation staff was asked to make modifications and speak to the various user groups about the proposed fee structure. City staff will present the proposed updated fee structure, obtain any additional feedback, and prepare a resolution for consideration at the next City Council business meeting.			
<b><u>Original Background from November 28, 2017 Workshop:</u></b>			
City Council approved amending the fee structure for Parks and Recreation in 2011. As part of the City Council goals and objectives, the Parks and Recreation Fee Structure should be reviewed every five years. Staff will provide Council with an analysis and recommendation of changes to the fee structure.			
<b>Recommended Action:</b>			
Adopt Resolution 2018-XX approving an updated Parks and Recreation Fee Structure.			

**RESOLUTION 2018-\_\_\_\_**  
**PARKS AND RECREATION**  
**FEE STRUCTURE**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING THE PARKS AND RECREATION FEE STRUCTURE; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Palm Coast last updated the Parks and Recreation Fee Structure in 2011; and

**WHEREAS**, City staff has reviewed the fee structure and recommends updating the Parks and Recreation Fee Structure per City Council’s stated goals and objectives; and

**WHEREAS**, the City desires to continue to collect fees as outlined in the Parks and Recreation Fee Structure to offset the costs of providing parks and recreational amenities and services;

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

**SECTION 1. APPROVAL OF THE PARKS AND RECREATION FEE STRUCUTRE.** The City Council of the City of Palm Coast hereby approves the Parks and Recreation Fee Structure, as attached hereto and incorporated herein by reference as Exhibit “A.”

**SECTION 2. 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 3. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 4. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

**SECTION 5. EFFECTIVE DATE.** This Resolution shall take effect immediately upon adoption by the City Council.

**DULY PASSED AND ADOPTED** by the City Council of the City of Palm Coast, Florida, on this 6th day of February 2018.

**CITY OF PALM COAST, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
MILISSA HOLLAND, MAYOR

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

Attachment: Exhibit "A" – Parks and Recreation Fee Structure

Approved as to form and legality

\_\_\_\_\_  
William E. Reischmann, Jr., Esq.  
City Attorney

**Palm Coast Parks & Recreation Department  
PARKS & FACILITIES**

FACILITY	DESCRIPTION	FEES
<p><b>Palm Coast Community Center</b> Parks &amp; Recreation Office 305 Palm Coast Parkway NE Phone: (386) 986-2323 Fax: (386) 986-2470</p> <p><u><b>Available Amenities:</b></u></p>	<b>ROOMS</b>	<b>Hourly Rates:</b> Business Hours M-F 8am-5pm <i>(2 hour minimum reservation required)</i>
	Activity Room 114 ▪ Seating 45	Non-Profit/Individual \$15 per hour For-Profit \$50 per hour
	Home Town Room 101 ▪ Seating 125	Non-Profit/Individual \$20 per hour For-Profit \$75 per hour
	Sunshine Room 116 ▪ Seating 175	Non-Profit/Individual \$25 per hour For-Profit \$100 per hour
	Banquet Room 112 ▪ Seating 225	Non-Profit/Individual \$35 per hour For-Profit \$125 per hour
		After Hours M-F 5-12pm/Weekend Rates
	Activity Room 114 ▪ Seating 45	Non-Profit/Individual \$20 per hour For-Profit \$50 per hour
	Home Town Room 101 ▪ Seating 125	Non-Profit/Individual \$25 per hour For-Profit \$100 per hour
	Sunshine Room 116 ▪ Seating 175	Non-Profit/Individual \$30 per hour For-Profit \$100 per hour
	Banquet Room 112 ▪ Seating 225	Non-Profit/Individual \$175 4 hour block For-Profit \$350 4 hour block
		<b>Plus:</b> \$100 Security Deposit ( <i>Refundable</i> )
		<b>Required Room Set up by Staff</b> \$37.50 (50 guests or fewer) \$50 (51 guests or more)
		<b>Available for Additional Fee:</b> \$50 Alcohol Permit (Insurance Required)

<p><b>Belle Terre Park</b> 339 Parkview Drive 10.9 Acres</p> <p>To Reserve:(386) 986-2323</p>	<p><b>PAVILION RENTAL</b> Pavilion #1 Pavilion #2 Playground Gazebo</p> <p><b><u>Available Amenities:</u></b> 3 Tennis Courts 2 Handball/Racquet Ball Courts Restrooms Water Fountain Tot Lot Playground School Age Playground</p> <p><b>MULTI-PURPOSE FIELDS</b></p> <p><b><u>Field Reservations</u></b> <i>(In conjunction with pavilion rental)</i></p> <p><b><u>Field Lining</u></b> <i>Soccer/ Lacrosse/ Football</i></p>	<p><b><u>Daily Rate:</u></b> \$25 <i>(Rental to conclude by 6:00pm, DST)</i></p> <p><b><u>Plus:</u></b> \$50 Security Deposit <i>(Refundable)</i></p> <p><b>Electricity &amp; Water is <u>not</u> available</b></p> <p><b><u>Daily Rate</u></b> \$25 <i>(To coincide with hrs of Pavilion Rental)</i></p> <p><b><u>Field Lining Fee:</u></b> \$71 /Field Lining</p>
<p><b>Central Park at Town Center</b> 975 Central Ave. 15.63 Acres</p> <p>To Reserve: (386) 986-2323</p>	<p><b><u>Available Amenities:</u></b> Restrooms Water Fountain PA System throughout Park .48 Mile Perimeter Walking Trail</p>	<p><b><u>Amphitheater</u></b> \$50 Daily Rate</p> <p><b><u>Entire Park and Amphitheater</u></b> Non-Profit/Individual \$50 daily rate For-Profit \$250 daily rate</p> <p><b><u>Plus:</u></b> \$100 Security Deposit <i>(Refundable)</i></p> <p><b><u>Available for Additional Fees:</u></b> \$25 Alcohol Permit (Insurance Required)</p> <p><b>Reservations designated by the City of Palm Coast as “Special Events” must adhere to the rules and procedures of the Special Event Review Team (SERT)</b></p>

<p><b>Frieda Zamba Swimming Pool</b>  339 Parkview Drive  Phone: (386) 986-4741  Fax: (386) 986-2470</p>	<p><b>SWIMMING POOL</b>  25 yard length  ▪ Heated &amp; Lighted</p> <p><b><u>Available Amenities</u></b>  Water Fountain  Men's &amp; Women's Locker Room  Tables w/umbrella's &amp; chairs  Chaise lounges</p> <p><b>PAVILION RENTAL</b>  <b>Pavilion #1</b>  <b>Pavilion # 2</b>  <b>Pavilion # 3</b>  <b>Pavilion # 4</b></p>	<p><b><u>Daily Rate:</u></b>  \$15 + Daily Admission Fee Per Guest  <i>(Pavilion Reservations during operating hours)</i></p> <p><b><u>Plus:</u></b>  \$50 Security Deposit <i>(Refundable)</i></p> <p><b>AFTER HOURS RESERVATION</b>  <b><u>Reservation Fee:</u></b> \$150  2 Hours; 3 Guards; Max attendance of  105 guests</p> <p><b><u>Additional Hourly Rate:</u></b> \$50  Applies to hours 3 &amp; beyond; 3 guards with  max. attendance of 105 guests</p> <p><b><u>Additional Staff Fee:</u></b> \$25/hour</p> <p><b>**No alcohol permitted with a pool  reservation, regardless of age of guests</b></p>
<p><b>Hero's Memorial Park</b>  2860 Palm Coast Parkway SE  1 Acre   To Reserve: (386) 986-2323</p>	<p>Dedicated memorial in recognition of  local armed forces, law enforcement  officers, firefighters and EMT's who  lost their lives in the line of duty.</p>	<p><b><u>Daily Rate:</u></b>  \$25 <i>(Rental to conclude by 6:00pm, DST)</i></p> <p><b><u>Plus:</u></b>  \$50 Security Deposit <i>(Refundable)</i></p>

<p><b>James Holland Memorial Park</b>  18 Florida Park Drive  26.75 Acres</p> <p>To Reserve: (386) 986-2323</p>	<p><b>PAVILION RENTAL</b>  Pavilion #1 (inside playground)  Pavilion #2  Pavilion #3 (attached restrooms)  Pavilion #4 (inside dog park)</p> <p><b><u>Available Amenities:</u></b>  Picnic Tables within Pavilions  BBQ Grills  Restrooms  Water Fountains  School Age Playground  Large and Small Dog Park</p> <p><b>SPORTS FIELDS &amp; AMENITIES</b>  1 Baseball Fields  1 Softball Field  2 Soccer Fields  3 Tennis Courts  2 Basketball Courts  2 Bocce Ball Courts  1 Shuffleboard Courts</p> <p><b>FIELD RESERVATION</b></p> <p><b><u>Field Lining</u></b>  <i>Baseball</i>  <i>Soccer/ Lacrosse/ Football</i></p>	<p><b><u>Daily Rate:</u></b> <i>(Rental to conclude by 6:00pm, DST)</i>  \$25  \$50  \$50  \$25</p> <p><b><u>Plus:</u></b>  \$50 Security Deposit <i>(Refundable)</i></p> <p><b><u>Available for Additional Fees:</u></b>  \$50 Alcohol Permit (Insurance Required)</p> <p><b>Electricity &amp; Water is <u>not</u> available</b></p> <p><b><u>Daily Rate</u></b>  \$25 <i>(To coincide with hrs of Pavilion Rental)</i></p> <p><b><u>Field Lining Fee:</u></b>  \$34 /Field  \$71 /Field</p>
---	---	---

<p><b>Linear Park</b>  31 Greenway Court  57 Acres</p> <p>To Reserve: (386) 986- 2323</p>	<p><b>PAVILLON</b>  Pavilion #1  Pavilion #2  Pavilion #3  (1 picnic table &amp; 1 grill per pavilion)</p> <p><b><u>Available Amenities:</u></b>  School Aged Playground  1 Shuffleboard Court  1 Bocce Court  Restrooms  Water Fountains  .50 Mile Perimeter Walking Trail</p>	<p><b><u>Daily Rate:</u></b>  \$25 <i>(Rental to conclude by 6:00pm, DST)</i></p> <p><b><u>Plus:</u></b>  \$50 Security Deposit <i>(Refundable)</i></p> <p><b><u>Available for Additional Fee:</u></b>  \$25 Alcohol Permit (Insurance Required)</p> <p><b>Electricity &amp; Water is <u>not</u> available</b></p>
---	---	--



<p><b>Ralph Carter Park</b> 1385 Rymfire Drive 13.12 Acres</p> <p>To Reserve: (386) 986- 2323</p>	<p><b>COVERED PATIO</b> Patio #1  <ul style="list-style-type: none"> <li>▪ 2 BBQ Grills</li> <li>▪ 4 Tables</li> </ul> Pavilion #2  <ul style="list-style-type: none"> <li>▪ 1 Tables</li> </ul> <p><b><u>Available Amenities:</u></b>  Water Fountain  School Aged Playground  Skate Park  Restrooms  .40 Mile Perimeter Walking Trail</p> <p><b>SPORTS FIELDS &amp; AMENITIES</b>  2-4 Multi-Purpose Fields  1 Basketball Court</p> <p><b><u>Field Reservation</u></b></p> <p><b><u>Field Lining</u></b>  <i>Soccer/ Lacrosse/ Football</i></p> </p>	<p><b><u>Daily Rate:</u></b>  \$25 (<i>Rental to conclude by 6:00pm, DST</i>)</p> <p><b><u>Plus:</u></b>  \$50 Security Deposit</p> <p><b><u>Available for Additional Fees:</u></b>  \$25 Alcohol Permit (Insurance Required)</p> <p style="text-align: center;"><b>Electricity &amp; Water is <u>not</u> available</b></p> <p><b><u>Daily Rate</u></b>  \$25 (<i>to coincide with hrs of Pavilion Rental</i>)</p> <p><b><u>Field Lining Fee:</u></b>  \$71 /Field</p>
<p><b>Seminole Woods Neighborhood Park</b> 350 Sesame Boulevard 12.4 Acres</p> <p>To Reserve: (386) 986- 2323</p>	<p><b>COVERED PATIO</b> Patio #1  <ul style="list-style-type: none"> <li>▪ 2 Picnic Tables</li> </ul> <p><b><u>Available Amenities:</u></b>  School Aged Playground  Water Fountain  Restrooms  .50 Mile Perimeter Walking Trail</p> <p><b>SPORTS FIELDS &amp; AMENITIES</b>  1 Baseball/Softball Field  1 Tennis Court – Lighted  1 Basketball Court – Lighted</p> </p>	<p><b><u>Daily Rate:</u></b>  \$25 (<i>Rental to conclude by 6:00pm, DST</i>)</p> <p><b><u>Plus:</u></b>  \$50 Security Deposit</p> <p><b><u>Available for Additional Fees:</u></b>  \$25 Alcohol Permit (Insurance Required)</p> <p style="text-align: center;"><b>Electricity &amp; Water is not available</b></p>

<p><b>Waterfront Park</b> 150 Waterfront Park Road 20 Acres</p> <p>To Reserve: (386) 986- 2323</p>	<p><b>PAVILION</b> Pavilion #1 Pavilion #2 Pavilion #3 Covered Patio</p> <p><b>Available Amenities:</b> Scenic view of the Intracoastal Waterway Pier for fishing or relaxing Walking trails Benches along walking trails School aged playground Water fountain</p>	<p><b>Daily Rate:</b> \$25 (Rental to conclude by 6:00pm, DST)</p> <p><b>Plus:</b> \$50 Security Deposit</p> <p><b>Available for Additional Fees:</b> \$25 Alcohol Permit (Insurance Required)</p> <p><b>Electricity &amp; Water is not available</b></p>
<p><b>Palm Coast Tennis Center</b> 1290 Belle Terre Parkway 47.98 Acres</p> <p>For info: (386) 986- 2550</p>	<p><b>SPORTS COURTS &amp; AMENITIES</b></p> <p>10 Lighted Hydro-Clay Courts Pro-Shop with Racquet Stringing Gazebo Restrooms Water Fountains Lehigh Trail Access/Parking</p>	<p><b>Pass holder Fees</b> Single \$550 Junior \$149</p> <p><b>PAVILION RENTAL</b> <b>Daily Rate:</b> \$25</p> <p><b>Plus:</b> \$50 Security Deposit</p>
<p><b>Palm Harbor Golf Course</b> 20 Palm Harbor Drive 160 Acres</p> <p>To info: (386) 986- GOLF</p>	<p><b>COURSE &amp; AMENITIES</b></p> <p>18 Hole, Par 72 Golf Course Practice Green &amp; Driving Range Cart Rental Club Rental Club House/Pro Shop Canfield's Restaurant/Bar Outdoor covered patio seating Restrooms Walking Allowed</p>	<p><b>Call for Daily Rates</b></p> <p>PHGC Green Fees 18 Holes Nov 1-April 30 (Peak Season)</p>

Green Fees 18 Holes Nov 1-April 30 (Peak Season)

<b>INCLUDES GOLF CART</b>	<b>PUBLIC RATE</b>	<b>FLORIDA RESIDENT</b>	<b>CITY RATE</b>	<b>Market Rate</b>
Morning 7 AM to 11 AM	\$47.00	\$43.00	\$38.00	\$47.50
Afternoon 11 AM to 2:00 PM	\$40.00	\$37.00	\$32.00	\$40.50
Twilight After 2:00 PM	\$32.00	\$30.00	\$24.00	\$30.65
TheLoop After 2:00pm	\$17.00	\$12.00	\$10.00	

Green Fees 18 off season May 1-Sept 30

<b>INCLUDES GOLF CART</b>	<b><i>PUBLIC RATE</i></b>	<b><i>FLORIDA RESIDENT</i></b>	<b><i>CITY RATE</i></b>
Morning 7 AM to 11 AM	\$45.00	\$40.00	\$35.00
Afternoon 11 AM to 2:00 PM	\$38.00	\$34.00	\$29.00
Twilight After 2:00 PM	\$30.00	\$28.00	\$24.00
The Loop After 2:00pm	\$15.00	\$10.00	\$10.00

Athletics Seasonal Rates

\$3 per registered player per organization\*

\*(Sports Alliance member Free)

Tournament Fields Rates

\$25 per day or \$35 for the weekend\*

Deposit \$250 per field

Deposit is non-refund if fields are requested and not used/limited capacity

\*(Sports Alliance member Free)

# City of Palm Coast, Florida Agenda Item

Agenda Date: 02/06/2018

<p><b>Department</b> IT <b>Item Key</b></p>	<p><b>Amount</b> \$76,000.00 <b>Account #</b> 54702525-034000-23001</p>										
<p><b>Subject</b> RESOLUTION 2018-XX APPROVING A CONTRACT WITH MAGELLAN ADVISORS FOR MUNICIPAL BROADBAND NETWORK BUSINESS PLAN</p>											
<p><b>Background :</b>  <u><b>Update for the February 6, 2018 Business Meeting</b></u>            This item was heard by City Council at their January 30, 2018 Workshop. There were no changes suggested to this item.</p> <p><u><b>Original Background from January 30, 2018 Workshop</b></u>            In 2005, the City of Palm Coast, approved and funded the creation of a Municipal fiber optic network. The original intent of this network was to connect all city buildings to reduce ongoing communication expenses related to the operation of the City's Wide Area Network (WAN). Construction began in June of 2006. Subsequently, in 2007, the decision was made to open the network for use by other public agencies as well as local businesses. Fibernet, as we know it today, has been operational since 2010. Aside from the 21 City buildings connected via the fiber optic network, an additional 40+ facilities are using FiberNet including 14 schools. Today, FiberNet spans 50+ miles throughout Palm Coast and neighboring cities.</p> <p>Prior to launching our fiber network program over 10 years ago, the City contracted with a private firm to develop a business plan. That business plan is out-of-date, and there have been many changes with this technology over the years. One of the priorities of City Council this year is to update the business plan and evaluate options to possibly expand the benefit of the fiber network throughout the entire community.</p> <p>To that end, City staff developed a draft Request for Proposals (RFP), which was presented to City Council at the September 26, 2017 City Council workshop. Subsequently, the City released the RFP and received three (3) responses. The Evaluation Team requested formal presentations and determined that Magellan Advisors was the top-ranked firm. The notice of intent to award and project bid overview are attached.</p> <p>City staff recommend that City Council approve a contract with Magellan Advisors for a Municipal Broadband Network Business in an amount not to exceed \$76,000. This is within the budgeted amount of \$85,000 for this project.</p> <p><b>SOURCE OF FUNDS WORKSHEET FY 2018 INFORMATION TECHNOLOGY 54702525-034000-23001</b></p> <table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 50%;">Approved Budget</td> <td style="width: 50%; text-align: right;">\$ 126,700.00</td> </tr> <tr> <td>Total Expenses/Encumbered to date</td> <td style="text-align: right;">\$ 249.14</td> </tr> <tr> <td>Pending Work Orders/Contracts</td> <td style="text-align: right;">\$ 0.00</td> </tr> <tr> <td>Current Work Order</td> <td style="text-align: right;">\$ 76,000.00</td> </tr> <tr> <td>Remaining</td> <td style="text-align: right;">\$ 50,450.86</td> </tr> </table>		Approved Budget	\$ 126,700.00	Total Expenses/Encumbered to date	\$ 249.14	Pending Work Orders/Contracts	\$ 0.00	Current Work Order	\$ 76,000.00	Remaining	\$ 50,450.86
Approved Budget	\$ 126,700.00										
Total Expenses/Encumbered to date	\$ 249.14										
Pending Work Orders/Contracts	\$ 0.00										
Current Work Order	\$ 76,000.00										
Remaining	\$ 50,450.86										
<p><b>Recommended Action:</b>            Approve Resolution 2018-XX approving a contract with Magellan Advisors for a Municipal Broadband Network Business Plan.</p>											

**RESOLUTION 2018-\_\_\_\_**

**CONTRACT WITH MAGELLAN ADVISORS  
FOR MUNICIPAL BROADBAND NET WORK BUSINESS PLAN**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING A CONTRACT WITH MAGELLAN ADVISORS FOR MUNICIPAL BROADBAND NETWORK BUSINESS PLAN; PROVIDING FOR SEVERABILITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, Magellan Advisors desires to provide a Municipal Broadband Network Business Plan to the City of Palm Coast; and

**WHEREAS**, the City of Palm Coast desires to approve a contract with Magellan Advisors for the above referenced services.

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

**SECTION 1. APPROVAL OF CONTRACT.** The City Council of the City of Palm Coast hereby approves the terms and conditions of the contract with Magellan Advisors to provide a municipal broadband network business plan, as referenced herein and attached hereto as Exhibit “A.”

**SECTION 2. AUTHORIZATION TO EXECUTE.** The City Manager, or designee, is hereby authorized to execute the Contract as depicted in Exhibit “A.”

**SECTION 3. SEVERABILITY.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Resolution are severable, and if any phrase, clause, sentence, paragraph or section of this Resolution shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections 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 ADOPTED** by the City Council of the City of Palm Coast, Florida, on this \_\_\_ day of February 2018.

**CITY OF PALM COAST, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
MILISSA HOLLAND, MAYOR

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

Attachment: Exhibit "A" – Contract with Magellan Advisors

Approved as to form and legality

\_\_\_\_\_  
William E. Reischmann, Jr., Esq.  
City Attorney



# RFP-IT-18-05 - Municipal Broadband Network Business Plan

## Project Overview

<b>Project Details</b>	
<b>Reference ID</b>	RFP-IT-18-05
<b>Project Name</b>	Municipal Broadband Network Business Plan
<b>Project Owner</b>	Kelly Downey
<b>Project Type</b>	RFP
<b>Department</b>	Procurement
<b>Budget</b>	\$0.00 - \$0.00
<b>Project Description</b>	The City of Palm Coast desires to solicit qualified proposals for a consultant team to create a Municipal Broadband Network Business Plan to guide the operation, expansion, implementation, maintenance, regulation, and funding of its municipal broadband assets and related technologies in accordance with this Request for Proposals (RFP). The preferred consultant must demonstrate prior experience working with government agencies development business plans for Municipal Broadband Networks.
<b>Open Date</b>	Oct 04, 2017 8:00 AM EDT
<b>Close Date</b>	Nov 02, 2017 2:00 PM EDT

<b>Awarded Suppliers</b>	<b>Reason</b>	<b>Score</b>
<b>Magellan Advisors</b>		<b>1,014.60 pts</b>



## Seal status

Requested Information	Unsealed on	Unsealed by
Proposal	Nov 02, 2017 2:00 PM EDT	Kelly Downey
Required Forms	Nov 02, 2017 2:00 PM EDT	Kelly Downey

## Conflict of Interest

# Declaration of Conflict of Interest You have been chosen as a Committee member for this Evaluation. Please read the following information on conflict of interest to see if you have any problem or potential problem in serving on this committee. ## Code of Conduct All information related to submissions received from Suppliers or Service Providers must be kept confidential by Committee members. ## Conflict of Interest No member of a Committee shall participate in the evaluation if that Committee member or any member of his or her immediate family: \* has direct or indirect financial interest in the award of the contract to any proponent; \* is currently employed by, or is a consultant to or under contract to a proponent; \* is negotiating or has an arrangement concerning future employment or contracting with any proponent; or, \* has an ownership interest in, or is an officer or director of, any proponent. Please sign below acknowledging that you have received and read this information. If you have a conflict or potential conflict, please indicate your conflict on this acknowledgment form with information regarding the conflict. I have read and understood the provisions related to the conflict of interest when serving on the Evaluation Committee. If any such conflict of interest arises during the Committee's review of this project, I will immediately report it to the Purchasing Director.

Name	Date Signed	Has a Conflict of Interest?
Kelly Downey	Nov 02, 2017 2:01 PM EDT	No
Sean Castello	Nov 06, 2017 9:07 PM EST	No
Donald Schrager	Nov 06, 2017 10:16 AM EST	No
Helena Alves	Nov 07, 2017 1:08 PM EST	No
steve viscardi	Nov 02, 2017 4:23 PM EDT	No





Debbie Streichsbier	Nov 08, 2017 1:23 PM EST	No
---------------------	--------------------------	----



## Project Criteria

Criteria	Points	Description
Project Understanding and Proposal	25 pts	Below Average 5 Points Average 10 Points Above Average 15 Points Well Above Average 20 Points Outstanding 25 Points
Project Innovation	15 pts	Below Average 3 Points Average 6 Points Above Average 9 Points Well Above Average 12 Points Outstanding 15 Points
Experience with Similar Projects	20 pts	Below Average 4 Points Average 8 Points Above Average 12 Points Well Above Average 16 Points Outstanding 20 Points
Project Team	25 pts	Below Average 5 Points Average 10 Points Above Average 15 Points Well Above Average 20 Points Outstanding 25 Points
Proposal Cost	15 pts	Below Average 3 Points Average 6 Points Above Average 9 Points Well Above Average 12 Points Outstanding 15 Points
Location of Responding Firm Office	5 pts	Outside of the state of Florida 0 Points Within the state of Florida 2 Points Within Flagler County 3 Points Within Palm Coast FL 5 Points
Required Forms	Pass/Fail	Forms A, B, 1 - 10



Presentation	1000 pts	Rate your # 1 firm 10 Rate your # 2 firm 5 Rate your # 3 firm 0
<b>Total</b>	<b>1105 pts</b>	



# Scoring Summary

## Active Submissions

	<b>Total</b>	<b>Project Understanding and Proposal</b>	<b>Project Innovation</b>	<b>Experience with Similar Projects</b>	<b>Project Team</b>
<b>Supplier</b>	<b>/ 1105 pts</b>	<b>/ 25 pts</b>	<b>/ 15 pts</b>	<b>/ 20 pts</b>	<b>/ 25 pts</b>
Magellan Advisors	1,014.60 pts	21 pts	7.6 pts	17.4 pts	18.8 pts
CCG Consulting	706.6 pts	15.6 pts	9.2 pts	14.2 pts	17 pts
Foresite Group, Inc.	418.2 pts	16.6 pts	8.4 pts	10.4 pts	16.4 pts

	<b>Proposal Cost</b>	<b>Location of Responding Firm Office</b>	<b>Required Forms</b>	<b>Presentation</b>
<b>Supplier</b>	<b>/ 15 pts</b>	<b>/ 5 pts</b>	<b>Pass/Fail</b>	<b>/ 1000 pts</b>



	<b>Proposal Cost</b>	<b>Location of Responding Firm Office</b>	<b>Required Forms</b>	<b>Presentation</b>
<b>Supplier</b>	<b>/ 15 pts</b>	<b>/ 5 pts</b>	<b>Pass/Fail</b>	<b>/ 1000 pts</b>
Magellan Advisors	9 pts	0.8 pts	Pass	940 pts
CCG Consulting	9.2 pts	1.4 pts	Pass	640 pts
Foresite Group, Inc.	4.4 pts	2 pts	Pass	360 pts

## PROJECT OVERVIEW AND OBJECTIVES

While the City has been successful in developing and using its Municipal Broadband Network as outlined in the Background Section below, the City is looking for additional ways to maximize its municipal broadband assets both financial and for the purposes of economic development. Some key objectives are listed below.

- Better utilize existing fiber optic capacity
- Expand the number of ISPs offering service on the fiber optic network
- Evaluate whether the City should become a ISP
- Maximize the return on investment
- Use the Municipal Broadband Network to encourage economic development
- Use the municipal broadband to undertake “Smart City” projects

## SCOPE OF SERVICES

The consultant team will create a Municipal Broadband Network Business Plan to guide the operation, expansion, implementation, maintenance, regulation, and funding of its fiber optics assets and related technologies in accordance with this Request for Proposals (RFP). This scope of services outlines the tasks to achieve the above stated objectives.

### Task 1 – Current Condition Assessment

**Task 1A: Infrastructure Assessment** – Inventory and assess the current infrastructure of the City’s existing fiber-optic network.

**Task 1B: Inventory Of Services** – Provide detailed information of the services that are currently available to the City of Palm Coast. This should include available providers, service offerings, pricing data and competitive rate comparisons, bandwidth and analysis on the necessary level of bandwidth to adequately serve the community. Analyze existing City conduit (traffic signal, fire alarm, abandoned water/sewer lines, etc.), existing private sector conduits (gas, electrical, telecom), and existing private sector fiber to local and regional connections.

**Deliverable: Current Condition Assessment Summary** – Provide a summary on the current conditions and opportunity for City staff feedback.

### Task 2 – Feasibility Analysis

**Task 2A: Feasibility Analysis** – Conduct an analysis of expanding our municipal broadband network based upon asset inventory, industry trends, local market demand and competition. Assess the feasibility of using existing right of way, existing and new conduit pole lines and other assets to reduce the cost of deployments throughout the City. Availability and cost to connect to third party fiber providers for obtaining ISP services at internet Points of Presence. The analysis should address the following key components at a minimum, and include a summary comparing the different business models. Include any items that your company’s expertise tells you should be part of a Feasibility Analysis that isn’t specifically included below. Services provided may include (not limited to):

- A. Internet Based Live Television (IPTV)
- B. Traditional Broadcast Live Television (RF Video)
- C. Video on Demand (VOD)
- D. Telephone services (VoIP)
- E. Internet services (ISP, email, web hosting, etc.)
- F. Security and authentication requirements for business
- G. Bandwidth on Demand (BOD)
- H. High speed bandwidth (in excess of symmetrical 100 megabits)
- I. Supervisory Control and Data Acquisition (SCADA)/smart grid.
- J. Customers Served (Residential, Business, City Government, University, Wholesale...)
- K. Integration and fiber optic service to existing wireless tower sites and potential sites outlined in the Wireless Master Plan by Diamond Communications
- L. Funding Required (Financing options to include, but not limited to: general obligation bonds, revenue bonds, utility taxes, public/private partnerships and grants).
- M. Competing with Incumbent Providers (expected competitive response).

- N. Operational Requirements/Costs (including ongoing maintenance costs for both Central Office and Customer Premise Equipment).
- O. Customer Premise (End-user) equipment lifetime costs for hardware refreshes
- P. Pre-engineering study(s) at sufficient depth to estimate costs and approximate implementation timeframes for the network
- Q. Regulatory/Legal Requirements (Note any potential legal obstacles or risks that may be encountered in the creation of the network and the provisioning of the services)
- R. Revenue Generation
- S. Financial Risk
- T. Execution Risk
- U. Completion Options (implementation schedule and phasing, if necessary).
- V. Take Rate - one, three and five year projections.
- W. Projected profit and loss statements, balance sheets – expected and worst case models.
- X. Key milestones with periodic status meetings (minimum three) identified through work plan
- Y. Provide draft dig once policy (based on best practices from other cities)
- Z. Coordinate communication with existing providers and interest in Palm Coast project
- AA. Leverage existing City assets, specifically existing sewer lines which extend throughout the City.

**Task 2B: Smart City Assessment and Inventory** – Conduct stakeholder outreach meetings with each City department, division, and component (public safety, policing), to explore and document opportunities to deploy/utilize Smart City/IoT technologies to positively impact the Palm Coast community.

Brief documentation and correlation of the opportunity/initiative to departmental/City goals and objectives, as well as case study/white paper supporting documentation should be provided. Brief analysis on the understanding of benefits, financial/non-financial return objectives, community benefits and service improvements will be explored. The applications can include, but are not limited to utility (water, wastewater, stormwater) automation, WiFi, security/surveillance, traffic/parking, environmental sensors, automated/controlled lighting, to name a few.

**Deliverable: Feasibility Analysis Summary** – Provide a summary on the current conditions and opportunity for City staff feedback. The summary should include at least three (3) feasible recommendations to help guide the direction of the business plan.

### Task 3 – Network Design Alternatives

**Task 3A: Network Design Alternatives** – Provide an assessment of network design options, common vendor and technology alternatives, and related high-level prices estimates. Findings should include data summarizing technical capabilities of design alternatives.

- A. Research and present alternative fiber network design options, including recommended equipment solutions (cable head-end, junction cabinets, ONT, etc.) as well as fiber plant construction, specifically underground vs aerial installation. Underground installation assessment should include conduit and direct burial fiber construction.
- B. The analysis should include an assessment of what services the options are able to deliver, and the bandwidth and technical capabilities of the presented options.
- C. Provide guidance with regard to the best approach for a phased –in build out of the envisioned network facilities.
- D. Presented alternatives should be accompanied by high-level cost estimates.

**Deliverable: Network Design Alternatives Summary** – Provide a summary on the network design alternatives and opportunity for City staff feedback. The summary should include at least three (3) network design alternative recommendations.

### Task 4 – Business Model Alternatives and Considerations

**Task 4A: Business Model Alternatives** – Using the results of the entire analysis, develop a comprehensive written report that presents alternatives for deploying broadband services throughout the community, assuming the use of the City’s existing and planned economic development dark fiber infrastructure and other available telecommunications assets. The analysis must consider a wide continuum of business models and highlight associated costs for expansion, maintenance and operations.

- A. Propose a maintenance strategy and action plan which includes best management practices and procedures to protect assets. It must propose a pricing, marketing and management strategy and action plan for the City’s dark fiber network. The proposed model, strategy and action plan should be financially sustainable, providing for long term solvency and security.

- B. The analysis shall consider at least, but not limited to, the following classes of business model alternatives and appropriate variations within each model. Each model should include, at a minimum, actionable steps involved for implementation as well as the economic, service and growth potential of each option.
  - a. INFRASTRUCTURE PROVIDER – the City provides conduit and dark fiber services for lease to community organizations, businesses and broadband providers, which use the fiber to connect to one another and to data centers to reach the internet, cloud services and other content networks. Feasibility of economic incentives and potential growth.
  - b. OPEN-ACCESS PROVIDER – the City owns the Municipal Broadband Network and equipment needed to create a broadband network and may operate said network itself or in contract with others on its behalf. Content is typically resold from other providers;
  - c. PRIVATIZATION – Current city assets are managed and operated by private entity.
  - d. PUBLIC- PRIVATE PARTNERSHIPS – the City and one or more private organizations enter into a partnership to plan, fund, build, operate and maintain a broadband network within the municipality’s jurisdiction.
- C. Research and present analysis on the need for additional systems necessary to handle billing and customer service needs and estimates of additional staffing and equipment that will be necessary to implement these services, including but not limited to technicians, billing, customer services, trucks, buildings, tools, etc.
- D. Review operational cost drivers and provide information regarding the implications of those items on the business model.
- E. Research and provide a marketing strategy or marketing recommendations for each of the business model alternatives.

**Deliverable: Business Model Alternatives Report** – Provide a written report on the business model alternatives and opportunity to include justification for selected and non-selected business models for City staff feedback.

#### Task 5 – Financial Model, Alternatives, and Regulatory Assessment

**Task 5A: Financial Model and Alternatives** – Provide guidance on common financings alternatives likely to be available to the City. Based upon a reasonable set of assumptions, prepare and present forecasted financial results for the envisioned network operations. Inventory and assess the current infrastructure of the City’s existing fiber-optic network. Provide multi-year financial projections, including operational and maintenance costs, capital costs, etc. The final report shall include supporting documentation and any worksheets that support the final assessments. Special consideration shall be given to financial sensitivities in the market such as incumbent pricing strategies or customer based take rates.

**Task 5B: Regulatory Assessment** – Based on the City staff feedback. Provide an overview of regulatory matters that will be relevant to the operation of the envisioned network. In addition, an overview of regulatory trends and current regulatory issues should be provided.

**Deliverable: Financial Model, Alternatives, and Regulatory Assessment Summary** – Provide a summary on the financial model, alternatives, and regulatory assessment and opportunity for City staff feedback.

**Deliverable: Draft Presentation** – Provide a draft presentation covering Tasks 1 – 5 in preparation for the public meeting and opportunity for City staff feedback.

**Public Meeting: City Council Workshop** – Provide presentation covering Tasks 1 – 5 to City Council at a workshop for discussion and input.

#### Task 6 – Recommendations

**Task 6A: Recommendations** – Provide recommendations based on the information and analysis. These recommendations should address the objectives in this RFP.

**Deliverable: Recommendations** – Provide written recommendations and opportunity for City staff feedback.

#### Task 7 – Municipal Broadband Network Business Plan

**Task 7A: Draft Municipal Broadband Network Business Plan** – Complete draft of Municipal Broadband Network business plan encompassing the information completed in Tasks 1 – 6.

**Deliverable: Draft Municipal Broadband Network Business Plan** – Provide draft of Municipal Broadband Network business plan encompassing the information completed in Tasks 1 – 6 and opportunity for City staff feedback.



**Deliverable: Draft Presentation** – Provide a draft presentation covering complete draft of Municipal Broadband Network Business Plan, with a focus on recommendations, and opportunity for City staff feedback.

**Public Meeting: City Council Workshop** – Provide presentation covering complete draft of Municipal Broadband Network Business Plan, with a focus on recommendations.

**Task 7B: Municipal Broadband Network Business Plan** – Complete final Municipal Broadband Network business plan based on any comments and input.

**Deliverable: Municipal Broadband Network Business** – Provide final Municipal Broadband Network business plan.

## Revised Proposal Costs Sheet and Rates

The total cost to the City of Palm Coast as outlined in the chart below is \$76,500 and includes all work to be completed by Magellan for the City as stated in this Proposal. Our hourly rate for the proposal is \$175 per hour exclusive of overhead and travel, which is to be billed separately, and as incurred with a not-to-exceed estimate of \$2,500. We estimate completion of this project will require 420 billable hours of work.

Magellan will invoice the City monthly, using fixed billing over a 5-month project period.

Task	Description	Hours	Hourly Rate	Total
1	Current Condition Assessment	60	\$175	\$10,500
2	Feasibility Analysis	100	\$175	\$17,500
3	Network Design Alternatives	60	\$175	\$10,500
4	Business Model Alternatives & Considerations	50	\$175	\$8,750
5	Financial Model, Alternatives, and Regulatory Assessment	60	\$175	\$10,500
6	Recommendations	30	\$175	\$5,250
7	Municipal Broadband Network Business Plan	60	\$175	\$10,500
	Travel and Incidentals ( <b>Not-to-Exceed</b> )			\$2,500
	<b>Total Pricing (Not-to-Exceed)</b>	420		\$76,000



# City of PALM COAST

Administrative Services & Economic Development  
Central Services Division

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

## NOTICE OF INTENT TO AWARD

**Project:** RFP-IT-18-05 Municipal Broadband Network Business Plan

**Date:** December 13, 2017

**Appeal Deadline:** Appeals must be Filed by 5:00 PM on December 15, 2017

Firm	Ranking Order
<b>Magellan Advisors</b> Denver, CO	1
<b>CCG Consulting</b> Asheville, NC	2
<b>Foresite Group, Inc.</b> Birmingham, AL	3

The intent of the City of Palm Coast is to award RFP-IT-18-05 to Magellan Advisors.

*Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Central Service Division's Bid Protest procedures.*

*A proposer may protest matters involving the award of this Bid within three (3) business days from the posting of this recommendation to award. Failure to protest to the City's Acting Purchasing Manager, Beau Falgout (bfaigout@palmcoastgov.com) shall constitute a waiver of the protest proceedings.*

*Any decision of the Acting Purchasing Manager may be appealed to the City Manager by filing a written appeal to the City Manager within seven (7) days of the Acting Purchasing Manager's decision. Any decision of the City Manager may be appealed to the City Council by filing a written appeal to the City Clerk within seven (7) days of the City Manager's decision. The same procedures as above shall apply to contest the award of the contract.*

# City of Palm Coast, Florida Agenda Item

Agenda Date: 02/062018

<b>Department Item Key</b>	ADMINISTRATIVE SERVICES	<b>Amount Account #</b>	
<b>Subject</b>	RESOLUTION 2018-XX APPROVING RELEASE OF REQUEST FOR SOLUTIONS FOR EXECUTIVE SEARCH FIRM SERVICES		
<b>Background :</b>	<p><b><u>Update for the February 6, 2018 Business Meeting</u></b> This item was heard by City Council at their January 30, 2018 Workshop. There were no changes suggested to this item.</p> <p><b><u>Original Background from the January 30, 2018 Workshop</u></b> During the January 9<sup>th</sup> City Council workshop, City staff presented a summary of the points of consideration raised during 1-on-1 meetings with City Council. At the workshop, City Council provided feedback and direction to City staff regarding a Request for Solutions (RFS) to engage an executive search firm. Based on that input and direction, City staff have drafted the attached Request for Solutions for consideration.</p>		
<b>Recommended Action :</b>	Approve Resolution 2018-XX approving release of Request for Solutions (RFS) for Executive Search Firm Services.		

**RESOLUTION 2018 - \_\_\_\_**  
**REQUEST FOR SOLUTIONS**  
**FOR EXECUTIVE SEARCH FIRM SERVICES**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING RELEASE OF REQUEST FOR SOLUTIONS FOR EXECUTIVE SEARCH FIRM SERVICES; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS, AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Palm Coast desires to seek executive search firms services to hire the next City Manager; and

**WHEREAS**, the City Council of the City of Palm Coast desires to approve and authorize the release of the Request for Solutions for Executive Search Firm Services consistent with the City's Purchasing Policy and Procedures.

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

**SECTION 1. APPROVAL OF RELEASE OF REQUEST FOR SOLUTIONS.** The City Council of the City of Palm Coast hereby approves and authorizes the release of the Request for Solutions for Executive Search Firm Services, as referenced herein and attached hereto as Exhibit "A."

**SECTION 2. 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 3. CONFLICTS.** All resolutions or parts of resolutions in conflict with any of the provisions of this Resolution are hereby repealed.

**SECTION 4. IMPLEMENTING ACTIONS.** The City Manager is hereby authorized to take any actions necessary to implement the action taken in this Resolution.

**SECTION 5. EFFECTIVE DATE.** This Resolution shall take effect immediately upon adoption by the City Council.

**DULY PASSED AND ADOPTED** by the City Council of the City of Palm Coast, Florida, on this 6th day February 2018.

**CITY OF PALM COAST, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
MILISSA HOLLAND, MAYOR

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

Attachment: Exhibit "A" – Request for Solutions for Executive Search Firm Services

Approved as to form and legality

\_\_\_\_\_  
William E. Reischmann, Jr., Esq.  
City Attorney



city of  
PALM COAST

RFS-ADM-18-25

SOLUTIONS MANUAL

*Request for Solutions (RFS) for Executive Search Firm*



## Contents

Contents	1
Overview	1
General Description	3
Potential Scope of Services	5
Evaluation and Award	7
Instructions to Consultants for Solution Response	9
General Conditions	13
Contract Document	20

## Overview

CITY OF PALM COAST REQUEST FOR SOLUTIONS (RFS)	
TITLE EXECUTIVE SEARCH FIRM	REFERENCE RFS-ADM-18-25
ISSUED <b>February 14, 2018</b>	DUE <b>March 15, 2018 at 2 p.m.</b>
PURCHASING COORDINATOR <b>JESSE SCOTT</b> <b>(386) 986-2337</b> <b>JKScott@palmcoastgov.com</b>	PROJECT MANAGER <b>BEAU FALGOUT</b> <b>(386) 986-3796</b> <b>bfalgout@palmcoastgov.com</b>
BRIEF DESCRIPTION This Request for Solutions is issued for the purpose of identifying and selecting an Executive Search Firm to assist the City of Palm Coast with selection of the next City Manager.	
OTHER KEY DATES AND MEETINGS Question Deadline: March 8, 2018 at 2 p.m. Proposal Deadline: <b>March 15, 2018</b> at 2 p.m.	
DOCUMENT AVAILABILITY, SUBMISSION, OTHER INFORMATION Proposal documents are available through the City's Procurement Portal at ( <a href="https://palmcoastgov.bonfirehub.com/portal">https://palmcoastgov.bonfirehub.com/portal</a> ). Proposal submittals shall be received electronically through the City's Procurement Portal by the specified time and date. No other method of submission will be allowed or considered (i.e. Mailed, emailed, or hand delivered).	



## ABOUT PALM COAST, FLORIDA

The City of Palm Coast is a local government in Flagler County on the northeast coast of Florida. The City has approximately 85,000 residents and is a full-service City government offering a comprehensive list of services. City departments include Utility, Public Works, Administrative Services and Economic Development, Finance, Information Technology, Parks & Recreation, Fire and Human Resources. The City of Palm Coast contracts with the Flagler County Sheriff's Office for law enforcement services.

Facilities owned and operated by the City of Palm Coast include City Hall, the Utility Office, three water treatment plants, a wastewater treatment plant (with a second under construction), the Public Works yard, the Palm Coast Community Center (currently closed for renovation and expansion), five fire stations, a dozen City parks, a tennis center, a golf course, a swimming pool, and more than 125 miles of multiuse pathways for walking, running and bicycling. City Hall and the Utility Office are the two main facilities where citizens do business with the City, and they are open 8 a.m. to 5 p.m. weekdays. The Community Center is normally open daily from 8 a.m. to approximately 9 p.m., depending on the evening's programming. Parks and other recreational amenities are open seven days a week, usually from morning to night.

Palm Coasters are known for their active lifestyle and commitment to the environment. The City is situated on 70 miles of saltwater and freshwater canals and the Intracoastal Waterway and is just minutes from pristine Atlantic Ocean beaches. In addition to the parks and trails, the City offers abundant fishing and boating, world-class tennis and golf, and recreational programming for residents and visitors of all ages. The Indian Trails Sports Complex hosts soccer, lacrosse, baseball and other athletic tournaments for teams throughout the Southeast. Special events include the Arbor Day celebration, the Birds of a Feather Fest, the Intracoastal Waterway Cleanup, Movies in the Park, Food Truck Tuesdays, the Palm Coast & the Flagler Beaches Senior Games, the Starlight Event & Parade and more.

On the environmental side, Palm Coast goes beyond traditional recycling programs with a doorstep hazardous waste pickup and an annual Christmas tree recycling event. The City offers green building incentives to encourage residents to include energy-saving fixtures when they build new homes. There are opportunities to make a difference through Palm Coast's Adopt-A-Park/Road/Trail/Shoreline programs, by embracing paperless billing and by taking intentional steps to save water and conserve natural resources every day.

# General Description

## INTRODUCTION

The City of Palm Coast desires to solicit qualified solution proposals for an Executive Search Firm to collaborate with the City and guide it through the recruitment process for placement of the next City Manager. The City desires to select an Executive Search Firm that demonstrates ability to place successful candidates, but also a firm that can provide a solutions approach in a creative, innovative and progressive manner. The ideal firm would be able to demonstrate how they would best assist the City in providing a solution to the need of placing a new City Manager that meets the current and future needs of the City and how they would execute for the best solution. The firm would clearly outline in a convincing manner how and why they would be the best firm to provide the deliverable services.

*The general purpose of the Request for Solutions (RFS) is to identify Consultants with the requisite qualifications and resources best suited to provide a seamless and successful recruitment process resulting in the placement of a City Manager for the City of Palm Coast. It is the intent of the City, through the Request for Solutions (RFS), to maximize innovation, letting the marketplace offer solutions instead of issuing a prescriptive RFP.*

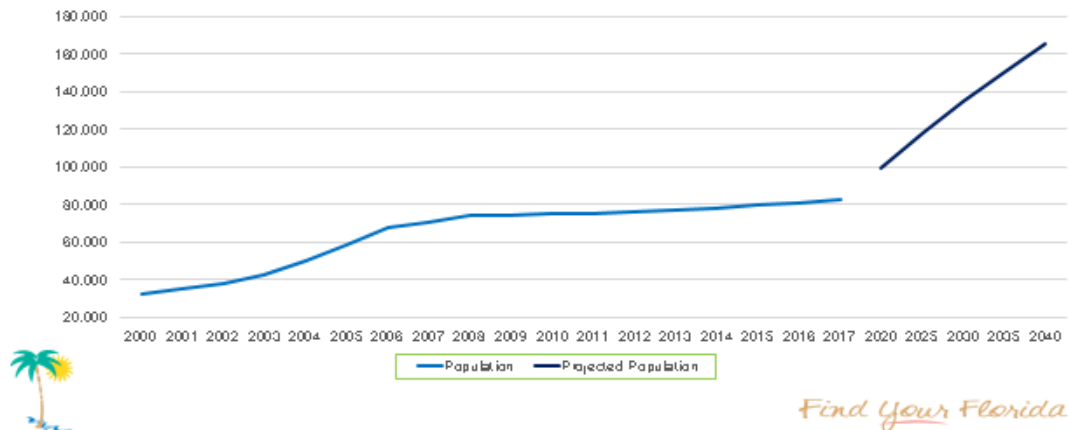
## OPPORTUNITY OVERVIEW AND OBJECTIVES

The City Council is looking for new and different approaches to selecting the next City Manager. The Council prefers a Solution Plan to be presented, versus the traditional RFP process. The Council also recognizes that the selected firm will need to understand not only the current dynamics of Council but also the Vision for Palm Coast over the next five to ten years. It is the objective of the Council to find the right “fit” with the Executive Search Firm that will mesh well with the needs and culture of the City. The City also wants to clearly break away from the traditional approach and selection of Executive Search Firms and the recruitment processes.

The City sees strong growth on the horizon and needs dynamic, innovative and visionary leadership to manage the growth and infrastructure challenges that lie ahead. Over the next three years, population is expected to increase by roughly 16,857 or 20%. From 2020 to 2025, an additional increase of 18,141 is projected (18%). Please refer to the chart below for population and growth through 2040.

Additional information about the City of Palm Coast, Florida is available [www.palmcoastgov.com](http://www.palmcoastgov.com).

## Population and Growth Projections



### BACKGROUND

Incorporated in 1999, the City of Palm Coast is a general law city and operates under a Council/City Manager form of government with a Mayor and four Councilmembers elected at large. The City has 399 full time employees. The City's current population is 82,760.

The current City Manager has stated his intention to retire in the fall of 2019 (approximately August of 2019) with an appropriate transition period with the next City Manager. The City Manager is supported by a nine member Executive Management Team. The appropriations set in the FY 18 budget is \$156.4 Million which includes \$98 Million for operating budgets, \$44 Million for Capital Projects and the balance appropriated for grants, internal transfers and debt service payments.

There will be Primary elections held in August 2018 for two of the four Councilmember seats. The candidate(s) with the majority vote would win the election. If no majority is evident, there will be a runoff election in November. The incoming Councilmembers will start their term in November 2018. The other two Councilmember seats and Mayor will be up for election during the 2020 election cycle.

Since incorporation in 1999, the City of Palm Coast has had 3 Mayors and 2 City Managers.

For informational purposes, the City's Strategic Action Plan and Adopted Budget can be found at:

<http://www.palmcoastgov.com/government/finance/sapa> and

<http://www.palmcoastgov.com/government/finance/budget>

*Responding firms should familiarize themselves with these important documents.*

## Potential Scope of Services

The selected consultant shall be an expert in executive recruitment who provides professional recruiting services. The Scope of Services includes collaborating with the City to clarify expected qualifications, skills, experience and leadership. The selected consultant will need to work with City Council to develop a reasonable and acceptable timeline for recruitment, selection, and transition.

On site consultation is anticipated in Palm Coast, Florida at various stages of the process. Below is a suggestion of **potential** process steps to consider when developing the Solutions Proposal:

### **I. Develop recruitment strategy and timeline with City Council**

- Acts as primary contact to City Council, guiding and advising them throughout the recruitment, selection and negotiation process.
- Work with Council to stress the importance of discretion throughout the process, upholding the highest standard of ethics, professionalism and confidentiality.
- Work with Council to reach consensus in all process steps.
- Work with current City Manager on acceptable timeline and transition to retirement.
- Provide realistic timeline for recruitment process and job placement.

### **II. Prepare candidate profile and job description**


- Advise Council on all phases of recruitment.
- Interview Councilmembers to obtain feedback for ideal qualifications, characteristics and priorities of a City Manager. This includes consensus development.
- Work with Council to identify priorities for new City Manager based on input obtained and develop overall candidate profile to include job description refinement.
- Review City Manager compensation package with Council and, if warranted, recommend changes based upon competitive market conditions.

### **III. Outreach and Advertising Campaign**

- Develop recruitment materials representing the opportunity and the City of Palm Coast community in an accurate and professional manner.
- Initiate comprehensive marketing strategy to reach as many potential qualified candidates nationwide.

### **IV. Candidate Screening**

- Manage all incoming applications including the review and screening of potential candidates as well as answering candidates' questions accurately and in a timely manner.
- Conduct preliminary interviews (either in person or virtual) with qualified candidates including initial reference checks.

- 
- Present a report to the City Council recommending the final candidates (Short List) including summaries of each finalist – their qualifications, resumes, accomplishments, summary of reference checks as well as an assessment of each candidate and their potential “fit” for the position. Report should include a list of all qualified applicants, their cover letters, resumes and any other documentation provided by candidates.
  - Notify all candidates of screening status.

**V. Candidate selection, background and job offer**

- Coordinate interviews with top finalists.
- Provide on-site advice and facilitation for all aspects of the interview process including interview strategies, assessment tests, community meet and greet and candidate questions.
- Advise Council on the final selection, as desired, including any additional meetings. Social interactions or other orientation activities to assess the “fit” between the candidate, position, the staff and overall community.
- Assist Council with contract negotiation with selected candidate.
- Describe any guarantees of job placement (i.e., one year)

## Evaluation and Award

The City shall negotiate the award to the responsive and responsible Consultant who submits a Solutions Response package that is most advantageous to the City. The City Council will serve as the Evaluation Committee to evaluate submittals. In determining the most advantageous submittal, the City reserves the right to consider criteria such as, but not limited to, innovative approach, facilitation skills of the team, flexibility, creativity in approach, understanding and grasp of the objective, collaboration skills, customer service, past experience, past performance and reputation. The City may opt to establish alternate selection criteria to protect its best interest or meet performance or operational standards.

Each Evaluation Committee member will evaluate the below factors. Each member will assign a criterion score ranging from the minimum points scale allowed to the maximum points scale allowed for each rating factor.

After accumulating the members' scores, the firm with the highest average score shall be ranked first, the next highest average score shall be ranked second, and so on. The initial ranking may be revised by City Council after City Council discussion and formal oral presentations/interviews (if required).

The City reserves the right to contact references provided by the Consultant or visit locations (prior placements) listed in the RFS. Information supplied by client references or obtained upon site visits may be used in determining the relative merits of the Consultant under any and all of the Evaluation Criteria.

### **EVALUATION CRITERIA:**

The following criteria will be used for evaluating proposals for the City of Palm Coast and will be based on criteria noted above:

<u>Evaluation Criteria</u>	<u>Maximum Points</u>
<b>A. Experience and Past Performance</b>	<b>35</b>
Ability to develop and deliver Executive Placement Solutions, addressing the question, <i>“What have you done to demonstrate you can find and place these kind of people?”</i> demonstrated by past experience with previous clients and firms comparable to the City of Palm Coast, including client references. References may be contacted during the evaluation process.	
<b>B. Ability to Collaborate and Facilitate</b>	<b>25</b>
Specific information on the Consultant’s ability to collaborate and facilitate with a divergent team reaching consensus decisions.	
<b>C. Ability to Reach a Broad Target Market</b>	<b>10</b>
The Consultant’s ability to reach a broad target market, approach to marketing the City as well as the Position, Market Networking, Use of Technology and Industry ranking.	

**D. Projected Cost 10**

Costs will not be the sole deciding factor in the selection process, but will be considered in the case of this RFS.

**E. Innovation and Creativity 20**

Consultant demonstrates innovative techniques used to recruit, screen and select candidates. Consultant demonstrates how they differ from the “Pack” in terms of Innovation and Creativity and how their approach would be the best option for the City of Palm Coast.

**TOTAL SCORE (100 possible points)**

**FORMAL ORAL PRESENTATIONS/INTERVIEWS (If Required)**

The City may choose to conduct oral interviews with, or receive oral presentations from, one or more of the proposers. If the City chooses to allow oral interviews and/or presentations, such interviews or oral presentations will open to the public. If oral presentations or interviews are held, the following guidelines will be used. The City’s Central Services Division shall establish the schedule and Proposers will be notified at least seven (7) calendar days in advance of the date, time and place of the presentations. The specific format of each presentation will be provided to Proposers with the notifications.

The City shall allot equal time for each Proposer divided into three sequential parts: formal presentations, questions/answers, and discussion. Oral presentations will provide an opportunity for the Proposers to demonstrate their ability to use time efficiently, effectively and economically. The times allotted are maximums and no firm will be penalized for using less than the allotted time.

**NEGOTIATION AND FEE SCHEDULE**

A “Fee Schedule” will be negotiated and agreed upon at the time of execution of a contract and will be part of the contract. All payments, fees, reimbursements, and costs will be based on the fee schedule established for the successful Proposer(s).

The City may award a contract on the basis of initial offers received, without discussion, or may require Proposers to give oral presentations based on their Proposals. The City reserves the right to enter into negotiations, including price, with the top-ranked proposer, and if the City and the top-ranked Proposer cannot negotiate a mutually acceptable contract, the City may terminate the negotiations and begin negotiations with the second-ranked Proposer. This process may continue until a contract has been executed or all Proposals have been rejected. No Proposer shall have any rights in the subject project against the City arising from such negotiations.

# Instructions to Consultants for Solution Response

## GENERAL

The Consultant(s) warrants its response to this Request for Solutions (RFS) to be fully disclosed and correct. The firm must submit a Solution Response complying with this RFS, and the information, documents and material submitted in the Solution Response must be complete and accurate in all material aspects. All Solution Responses must contain direct responses to the following questions or requests for information and be organized so that specific questions being responded to are readily identifiable and in the same sequence as outlined below.

Proposers are advised to carefully follow the instructions listed below in order to be considered fully responsive to this RFP. Proposers are further advised that lengthy or overly verbose or redundant submissions are not necessary. Compliance with all requirements will be solely the responsibility of the Proposer. Failure to provide requested information may result in disqualification of response.

The Solution Response shall cover in as much detail as possible the requirements of the solicitation, subject to modification and enhancements as a result of information gained during the consultant selection process.

The Solution Response must be submitted electronically.

Proposers must provide the required information listed below and in the specified order and format. Each Firm shall provide information, documentation and other necessary materials that best demonstrates and informs City of Palm Coast of the firm's abilities, professional competence, and expertise to provide the services desired. The submittal response should be focused with concise descriptions of the firm's solution approach. Each Firm is expected to examine all specifications, terms, conditions, and instructions in the Request for Solutions. Failure to do so will be at the Firm's Risk.

The Proposal must be divided into six (6) sections with references to parts of this RFS done on a section number/paragraph number basis. The six (6) sections shall be named:

1. Solutions Request Executive Summary
2. Table of Contents
3. Solutions Request Understanding and Proposal
4. Experience and Past Performance
5. Projected Cost
6. Innovation and Creativity



1. **SOLUTIONS REQUEST EXECUTIVE SUMMARY:** Discuss the highlights, key features and distinguishing points of the proposal. The executive summary should be in the form of a letter that at a minimum includes: name of individual, partnership, company, or corporation submitting proposal; city's RFS number; statement that all terms and conditions of the RFP are understood and acknowledged by the undersigned; and signature(s) of representative(s) legally authorized to bind the proposer. A separate sheet shall include a list of individuals and contract for this Proposal and how to communicate with them. Limit this section to five (5) pages.
2. **TABLE OF CONTENTS:** There shall be a Table of Contents for material included in the proposal.
3. **SOLUTIONS REQUEST UNDERSTANDING AND PROPOSAL:** This section of the proposal shall establish that the Proposer understands the City's objectives requirements and Proposer's ability to satisfy those objectives and requirements. Succinctly describe the proposed approach for addressing the required services and the firm's ability to meet the City's schedule, outlining the approach that would be undertaken in providing the requested services. Limit this section to twenty (20) pages.
4. **EXPERIENCE AND PAST PERFORMANCE:** This section of the proposal should outline the firms experience and ability to successfully complete executive level recruitment and selection with a governing board (public and/or private sector). This section of the proposal should include information and details about at least three (3) executive level placements. Details that highlight the proposer's ability to collaborate and facilitate a divergent team reaching consensus decisions and the ability of the firm to reach a broad target market should be included. Limit this section to twenty (20) pages.
5. **PROJECTED COST:** This section of the proposal shall outline the proposed costs for each step of the Proposers proposed scope of services. Typically, this is best demonstrated in a table format with the step identified and associated costs. Any anticipated travel expenses by the consultant's team should be included in the overall cost. Limit this section to two (2) pages.
6. **INNOVATION AND CREATIVITY:** This section of the proposal shall demonstrate innovative techniques used by the Proposer to recruit, screen and select candidates. Consultant should demonstrate how they differ from the "Pack" in terms of Innovation and creativity and how their approach would be the best option for the City of Palm Coast. Limit this section to eight (8) pages.

## PROPOSER RESPONSE

Proposer(s) shall submit complete and upload required forms through the process outlined below. Proposal prices must be submitted on the required forms.

## REQUIRED FORMS

The following forms are required to be submitted through the City's Procurement Portal. The forms are available at the end of this Proposal Manual.

Form A –Proposer Acknowledgement

Form B –Proposer’s Certification

Form C - References

Form 1 – Conflict of Interest Statement

Form 2 – Compliance with the Public Records Law

Form 3 – Drug-Free Workplace

Form 4 – American with Disabilities Act Affidavit

Form 5 – Vendor Registration Form

Form 6 – Summary of Litigation and License Sanctions

Form 7 – Certification Regarding Debarment, Suspension Ineligibility and Voluntary Exclusion

Form 8 – Certificate of Corporation

Form 9 – Public Entity Crime Form

Form 10 – Vendor Certification Regarding Scrutinized Companies List

## PREPARING AND UPLOADING SUBMISSION

Please follow these instructions to submit via our Public Portal.

### 1. Prepare your submission materials:

#### Requested Information

Name	Type	# Files	Requirement
RFP Proposal	File Type: PDF (.pdf)	Multiple	Required
Required Forms (A,B,C,1-10)	File Type: PDF (.pdf)	Multiple	Required

#### Requested Documents:

- Please note the type and number of files allowed. The maximum upload file size is 100 MB.
- Please do not embed any documents within your uploaded files, as they will not be accessible or evaluated.

### 2. Upload your submission at: <https://palmcoastgov.bonfirehub.com/opportunities/XXXX>

The Q&A period for this opportunity is **Date 2:00 PM EST to Date 2:00 PM EST**. You will not be able to send messages after this time.

Your submission must be uploaded, submitted, and finalized prior to the Closing Time of **Date 2:00 PM EST**. We strongly recommend that you give yourself sufficient time and **at least ONE (1) day** before Closing Time to begin the uploading process and to finalize your submission.

**Important Notes:**

- Each item of Requested Information will only be visible after the Closing Time.
- Uploading large documents may take significant time, depending on the size of the file(s) and your Internet connection speed.
- You will receive an email confirmation receipt with a unique confirmation number once you finalize your submission.
- Minimum system requirements: Internet Explorer 8/9/10+, Google Chrome, or Mozilla Firefox. JavaScript must be enabled.

**Need Help?**

Palm Coast uses a Bonfire portal for accepting and evaluating proposals digitally. Please contact Bonfire at [Support@GoBonfire.com](mailto:Support@GoBonfire.com) for technical questions related to your submission. You can also visit their help forum at <https://bonfirehub.zendesk.com/hc>

## General Conditions

- **CONTACT:** All prospective Proposers are hereby instructed not to contact any member of the City of Palm Coast City Council, City Manager, or City of Palm Coast staff members other than the noted contact person(s) regarding this request at any time prior to the request having been formally presented to, and voted on by, the City Council. Any such contact shall be cause for rejection of your request submittal.
- **PUBLIC OPENING:** The Solutions Request submittals shall be opened publically and the names of the proposers shall be read aloud at that time. Persons with disabilities needing assistance to participate in the public opening should contact the City Personnel Office ADA Coordinator at 386-986-3718 at least forty-eight (48) hours in advance of the public opening.

**DELAYS:** The City, at its sole discretion, may delay the scheduled due dates indicated if it is to the advantage of the City to do so. The City will notify Proposers of all changes in scheduled due dates by posting the notification in the form of addenda on the City's Procurement Portal Web Page (<https://palmcoastgov.bonfirehub.com/portal>).

**PROPOSAL SUBMISSION:** Solutions Request submittals shall be received electronically through the City's Procurement Portal Web Page (<https://palmcoastgov.bonfirehub.com/portal>) by the specified time and date. **No other method of submission will be allowed or considered (i.e. mailed, emailed, or hand delivered).** Any emailed, mailed, or hand delivered submittals will be returned to the sender and not be considered. Your submission must be uploaded, submitted, and finalized through the City's Procurement Portal Web Page prior to the specified time and date. We strongly recommend that you give yourself sufficient time and at least ONE (1) hour before Closing Time to begin the uploading process and to finalize your submission. No submissions through the City's Procurement Portal Web Page will be allowed or considered after the specified time and date. If you need general assistance, please contact Central Services Division staff at least one business day in advance. For technical questions related to your submission, please contact Bonfire at [Support@GoBonfire.com](mailto:Support@GoBonfire.com)

- **CONFIDENTIAL MATERIALS:** Any materials that qualify as "trade secrets" shall be segregated, clearly labeled and accompanied by an executed Non-Disclosure Agreement for Confidential Materials shall be submitted in this section.
- **SOLUTIONS REQUEST WITHDRAWAL:** Proposers may withdraw their Solutions Request submittals through the City's Procurement Portal up to the time prior to the time and date set for the proposal deadline. Solutions Request submittals, once opened, become the property of the City and will not be returned to the Proposers.

- **BID SECURITY:** A Bid Security is  required, or  not required for this proposal. If a bid security is required, a certified check, cashier's check or bid bond shall accompany each proposal if the bid amount is one-hundred thousand dollars (\$100,000) or greater. The certified check, cashier's check or bid bond shall be for an amount not less than five percent (5%) of the bid price and shall be made payable to the City as a guarantee that the proposer will not withdraw his/her proposal for a period of ninety (90) days after proposal closing time.
- **SOLUTIONS REQUEST ADDITIONAL INFORMATION:** No additional information may be submitted, or follow-up made, by any Proposer after the stated due date, outside of a formal presentation to the Evaluation Committee, unless requested by the City. At the time of opening and upon review of the proposal submittals, the City reserves the right to request all required forms/attachments (other than the pricing form and issued addenda) that may have not been submitted at the time of submittal. The respondent shall have twenty-four (24) hours from the City's request to supply this information to the City for their proposal submittal to be considered valid.
- **INQUIRIES/INTERPRETATIONS:** All Proposers shall carefully examine the proposal documents. Any ambiguities or inconsistencies shall be brought to the attention of the City Central Services Division prior to the due date in writing through the City's Procurement Portal Web Page (<https://palmcoastgov.bonfirehub.com/portal>); failure to do so, on the part of the Proposer, will constitute an acceptance by the Proposer of any subsequent decision. Any questions concerning the intent, meaning and interpretations of the proposal documents including the attached draft agreement, shall be requested in writing through the City's Procurement Portal Web Page (<https://palmcoastgov.bonfirehub.com/portal>) at least seven (7) calendar days prior to the due date. The City shall not be responsible for any oral statement or instructions made by any employee(s) of the City in regard to this proposal. Any oral statements or instructions given before the proposal due date will not be binding.
- **ADDENDA:** Should revisions to the proposal documents become necessary; the City shall post addenda information on the City's Procurement Portal Web Page (<https://palmcoastgov.bonfirehub.com/portal>). All Proposers should check the City's Procurement Portal Web Page at least three (3) calendar days before the date fixed to verify information regarding Addenda. Failure to do so could result in rejection of the proposal submittal as unresponsive. Proposer shall sign, date, and return all addenda with their proposal submittal. Addenda information will be posted on the City's Procurement Portal Web Page. It is the sole responsibility of the Proposer to ensure he/she obtains information related to Addenda.

- **SELECTION PROCESS AND AWARD:** The award will be made to a responsive, responsible Proposer consistent with the process and award criteria herein. The City reserves the right to accept any Proposal or combination of Proposal alternates which, in the City's judgment, will best serve the City's interest. Discrepancies in the multiplication of units of work and unit prices will be resolved in favor of the unit price. Discrepancies between the indicated sum of any column of figures and the correct sum thereof will be resolved in favor of the correct sum. The Proposer(s) understands that this Proposal does not constitute an agreement or a contract with the Proposal. The City reserves the right to reject all proposal, to waive any formalities, to solicit and re-advertise for new proposal or to abandon the project in its entirety. The right is reserved to make a separate award of each item, group of items or all items, and to make an award, in whole or in part, whichever is deemed in the best interest of the City.
  
- **GROUND FOR DISQUALIFICATION:** Any of the following causes may be considered as sufficient grounds for disqualification of a Proposer or the rejection of a Proposal:
  - a) Submission of more than one (1) Proposal for the same Work by any entity under the same or different names.
  - b) Evidence of collusion among proposers.
  - c) Lack of responsibility as shown by past Work from the standpoint of life safety including, but not limited to, strict adherence to all maintenance of traffic requirements of the City, workmanship, progress and financial irresponsibility.
  - d) Uncompleted Work for which the proposer is committed by contract which might hinder or prevent the prompt completion of Work under this proposal if an Agreement would have been awarded to the proposer.
  - e) Falsification of any entry made on the Proposal Documents shall be deemed a material irregularity and will be grounds, at the City's option, for disqualification of the proposer or rejection of the Proposal.
  - f) Non-compliance with the submittal requirements of these Instructions to Proposers
  - g) This section shall be construed liberally to benefit the public and not the Proposer; however, any other evidence which may hinder or otherwise delay completion of the Project may be grounds for disqualification.
  
- **AWARD CRITERIA:** The recommendation of award will be based on, but not limited to, the following criteria:
  - a) **Experience and Past Performance**
  - b) **Ability to Collaborate and Facilitate**
  - c) **Ability to Reach a Broad Target Market**
  - d) **Projected Cost**

#### e) Innovation and Creativity


- **PREPARATION COSTS:** Neither the City nor its representatives shall be liable for any expenses incurred in connection with preparation of a proposal. Proposers should prepare their proposals simply and economically, providing a straightforward and concise description of the Proposer's ability to meet the requirements of the proposal documents.
- **LOCAL PREFERENCE IN SELECTION AND AWARD:** The City has a Local Bid Preference Policy designed to aid local vendors. The Policy allows Local Vendors to be awarded a solicitation if their cost to the City is within 3% - 5% (depending on amount) up to total of \$20,000. Preference is given first to a vendor/contractor with a business address located within the City of Palm Coast. If no vendors/contractors with a local business address respond to a solicitation, preference is then given to vendors/contractors with a business address located within Flagler County.
- **ACCURACY OF SUBMITTAL INFORMATION:** Any Proposer that submits in their proposal to the City any information which is determined to be substantially inaccurate, misleading, exaggerated, or incorrect, shall be disqualified from consideration.
- **INSURANCE:** Misrepresentation of any material fact, whether intentional or not, regarding the Proposer's insurance coverage, policies or capabilities may be grounds for rejection of the response and rescission of any ensuing contract. Copy of the insurance certificate shall be furnished to the City prior to final execution of the contract.
- **LICENSES:** Proposers, both corporate and individual, must be fully licensed and certified in the State of Florida at the time of submittal of the proposal for the type of goods/services to be provided. Should the Proposer not be fully licensed and certified, their proposal submittal shall be rejected. If applicable, any permits, licenses, or fees required shall be the responsibility of the Proposer. No separate or additional payment will be made for these costs. Adherence to all applicable code regulations, Federal, State, City, City, etc., are the responsibility of the Proposer.
- **POSTING OF PROPOSAL AWARD:** Notice of Intent to Award will be posted for review by interested parties on the City's Procurement Portal Web Page (<https://palmcoastgov.bonfirehub.com/portal>) prior to submission through the appropriate approval process.
- **PROTEST:** Protests arising under the City Proposal Documents or Procedures shall be resolved under the City of Palm Coast Central Services Protest Procedures. A Proposer may protest matters involving the award of this contract within three (3) business days from the posting of the Notice of Intent to Award. Failure to protest to the City's Administrative Services and Economic Development (ASED)

Director shall constitute a waiver of protest proceedings. Any decision of the ASED Director may be appealed to the City Manager by filing a written appeal to the City Manager within seven (7) calendar days of the ASED Director's decision. Any decision of the City Manager may be appealed to the City Council by filing a written appeal to the City Clerk within seven (7) calendar days of the City Manager's decision. The same procedures as above shall apply to contest the award of the contract.

- **PUBLIC RECORDS:** Upon Notice of Intent to Award or thirty (30) days after receiving, proposal submittals become "public records" and shall be subject to public disclosure consistent with Chapter 119, Florida Statutes. Proposers must invoke the exemptions to disclosure provided by law in the response to the proposal documents, and must identify the data or other materials to be protected, and must state the reasons why such exclusion from public disclosure is necessary.
- **PROHIBITION AGAINST CONTINGENT FEES:** The Proposer warrants that he/she has not employed or retained any company or person, other than a bonafide employee working solely for the Proposer, to solicit or secure this Agreement and that the Proposer has not paid, or agreed to pay, any person, company, corporation, individual or firm, other than a bona fide employee working solely for the Proposer, any fee, commission, percentage, gift, or other consideration contingent upon, or resulting from, award or making of this Agreement. For the breach or violation of this provision, the City shall have the right to terminate this Agreement at its sole discretion, without liability, and to deduct from the Agreement price, or otherwise recover, the full amount of such fee, commission, percentage, gift or consideration.
- **ACCEPTANCE / REJECTION:** The City reserves the right to accept or reject any or all proposal submittals and to make the award to those Proposers, who in the opinion of the City will be in the best interest of and/or the most advantageous to the City. The City also reserves the right to reject the proposal submittal of any proposer who has previously failed in the proper performance of an award or to deliver on time contracts of a similar nature or who, in the City's opinion, is not in a position to perform properly under this award. The City reserves the right to inspect all facilities of Proposers in order to make a determination as to the foregoing. The City reserves the right to waive any irregularities, informalities, and technicalities and may at its discretion, request a re-procurement.
- **PROPOSALS TO REMAIN FIRM:** All Proposals shall remain firm for a minimum of one-hundred and twenty (120) days after the day of the opening to allow for the evaluation, selection process and proper execution of the Agreement. If need be, that time may be extended up to an additional ninety (90) days. Extensions of time when Proposals shall remain opened beyond the additional ninety-day period may be made only by mutual agreement between the City and the apparent winning Proposer. The successful Proposer must maintain the proposal prices firm for a minimum of one (1) year after the contract is executed. No cost increase will be authorized during the first year of the agreement.



- **ADDITIONAL TERMS AND CONDITIONS:** Unless expressly accepted by the City, only the terms and conditions in this proposal document shall apply. No additional terms and conditions included with the proposal submittal shall be considered. Any and all such additional terms and conditions shall have no force and effect, and are inapplicable to this proposal if submitted either purposely through intent or design, or inadvertently appearing separately in transmittal letters, specifications, literature, price lists or warranties. It is understood and agreed that the general and/or any special conditions in these proposal documents are the only conditions applicable to this proposal submittal and the Proposer's authorized signature on the Response Form attests to this statement. Exceptions to the terms and conditions will not be accepted.
- **PURCHASING PROCEDURES:** The Central Services Division Procedures apply in its entirety with respect to this proposal.
- **AFFIRMATION:** By submission of a proposal submittal, Proposer affirms that their proposal submittal is made without prior understanding, agreement or connection with any corporation, firm, or person submitting a proposal for the same materials, supplies, equipment or services, and is in all respects fair and without collusion or fraud. Proposer agrees to abide by all conditions of this proposal documents and the resulting contract.
- **MISTAKES IN PROPOSAL:** Proposers are expected to examine the terms and conditions, specifications, delivery schedule, prices, extensions and all instructions pertaining to supplies and services. Failure to do so will be at Proposer's risk. In the event of extension error(s), the unit price will prevail and the Proposer's total offer will be corrected accordingly. Written amounts shall take precedence over numerical amounts. In the event of addition errors(s), the unit price, and extension thereof, will prevail and the Proposer's total offer will be corrected accordingly. Proposal submittals having erasures or corrections must be initialed in ink by the Proposer.
- **MULTIPLE PROPOSAL SUBMISSIONS:** More ore than one proposal submittal from an individual, firm, partnership, corporation, or association under the same or different names will not be considered. Reasonable grounds for believing that a Proposer is involved in more than one proposal submittal will be cause for rejection of all proposal submittals in which such Proposers are believed to be involved. Any or all proposal submittals will be rejected if there is reason to believe that collusion exists between Proposers. Proposal submittals in which the prices obviously are unbalanced will be subject to rejection.
- **GOVERNMENTAL RESTRICTIONS:** In the event that any governmental restrictions are imposed which would necessitate alteration of the material quality, workmanship or performance of the items



offered on this proposal prior to their delivery, it shall be the responsibility of the Proposer to notify the Central Services Division at once, indicating in his/her letter the specific regulation which required an alteration, including any price adjustments occasioned thereby. The City reserves the right to accept such alteration or to cancel the contract or purchase order at no further expense to the City.

- **PATENTS AND COPYRIGHTS:** The Proposer, without exemption, shall indemnify and save harmless, the City, its employees and/or any of its Board Members from liability of any nature or kind, including cost and expenses for or on account of any copyrighted, patented, or unpatented invention, process, or item manufactured by the Proposer. Further, if such a claim is made, or is pending, the Proposer may, at its option and expense, procure for the City the right to use, replace or modify the item to render it non-infringing. If none of the alternatives are reasonably available, the City agrees to return the article on request to the Proposer and receive reimbursement. If the Proposer used any design, device, or materials covered by letters, patent or copyright, it is mutually agreed and understood, without exception, that the proposal submittal prices shall include all royalties or cost arising from the use of such design, device, or materials in any way involved in the work.
- **PURCHASING AGREEMENTS WITH OTHER GOVERNMENTAL AGENCIES:** In the event that any governmental restrictions are imposed which would necessitate alteration of the material quality, workmanship or performance of the items offered on this proposal prior to their delivery, it shall be the responsibility of the Proposer to notify the Central Services Division at once, indicating in his/her letter the specific regulation which required an alteration, including any price adjustments occasioned thereby. The City reserves the right to accept such alteration or to cancel the contract or purchase order at no further expense to the City.
- **ADVERTISING:** In submitting a proposal submittal, Proposer agrees not to use the results there from as a part of any commercial advertising, without the express written approval, by the appropriate level of authority within the City.
- **NON-APPROPRIATION OF FUNDS:** In the event that insufficient funds are appropriated and budgeted or funding is otherwise unavailable in any fiscal period for this proposal, the City shall have the unqualified right to terminate the Purchase or Work Order(s) or Agreement upon written notice to the Proposer, without any penalty or expense to the City. No guarantee, warranty or representation is made that any particular work or any project(s) will be assigned to any proposer(s).
- **CITY LOGO:** Proposers are approved to use the City logo in your submission materials and/or presentations.



## Contract Document

The draft contract is attached to this proposal manual. Proposers should review the draft contract template prior to submitting a proposal. If Proposer requires modifications or additional terms and conditions to the contract, then Proposer shall clearly identify those requested modifications or additional terms and conditions in its submittal.

# City of Palm Coast, Florida Agenda Item

Agenda Date:02/06/2018

<b>Department</b>	Information Technology	<b>Amount</b>	
<b>Item Key</b>		<b>Account</b>	
		<b>#</b>	
<b>Subject</b>	RESOLUTION 2018-XX APPROVING AN OPTION AND GROUND LEASE AGREEMENT WITH DIAMOND TOWERS V LLC FOR CONSTRUCTION OF A TELECOMMUNICATIONS TOWER AT 4 CORPORATE DRIVE		
<b>Background:</b>			
<b><u>Update for the February 6, 2018 Business Meeting</u></b>	This item was heard by City Council at their January 30, 2018 Workshop. There were no changes suggested to this item.		
<b><u>Original Background from the January 30, 2018 Workshop</u></b>	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.		
	Diamond Towers V LLC has requested to lease City property located at 4 Corporate Drive (Water Treatment Plant 1), 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, which was approved by City Council on January 16, 2018.		
	The site was also previously approved for a telecommunication facility with another tower builder. The previous builder decided not to proceed with construction and the previous lease option agreement has been terminated due to the failure of the tower builder to proceed with construction.		
	The terms of the lease agreement are consistent with the City Council approved contract with Diamond Towers. Some of the highlights are as follows:		
	<ol style="list-style-type: none"> <li>1. Initial term will be five years with the option to extend for nine, five-year periods.</li> <li>2. A Site Development Fee of \$25,000 shall be paid to the City upon the commencement of construction of the tower.</li> <li>3. City shall receive 40% of any new recurring revenue generated by the tower.</li> <li>4. Diamond Towers V LLC will have access to the land to build a 150-foot structure and house ground equipment on the site.</li> </ol>		
<b>Recommended Action:</b>	Approve Resolution 2018-XX approving an option and ground lease agreement with Diamond Towers V LLC for construction of a telecommunications tower at 4 Corporate Drive.		

**RESOLUTION 2018 - \_\_\_\_**  
**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 4 CORPORATE DRIVE; 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 4 Corporate Drive, 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 6th day of February 2018.

CITY OF PALM COAST, FLORIDA

ATTEST:

\_\_\_\_\_  
MILISSA HOLLAND, MAYOR

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

Attachments:  
Option and Ground Lease Agreement – Exhibit “A”

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 \_\_\_\_\_, 2018 (“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 Water Treatment Plant #1 (“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 other purposes which are ancillary and appurtenant, 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 (5<sup>th</sup>) 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 (10<sup>th</sup>) 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 (1<sup>st</sup>) 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) Lessee may construct and maintain a one hundred and fifty (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”). 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 an 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 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.

(e) Lessor grants Lessee the right to clear all trees, undergrowth, or other obstructions 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 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 in good working order and appearance and must maintain the structural integrity of the Tower, in accordance with all industry standards.

(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 judgment) 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 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 Lessee's Equipment; however, Lessor shall not be responsible to Lessee for any unauthorized access by non-related third parties. In all maintenance, repair, or replacement work performed by

Lessor on Lessor's equipment located on the Tower or Leased Premises, Lessor shall take all reasonable steps to not interrupt or interfere with the operation of Lessee or Lessee's sublessees', Tower Facilities, communications system or equipment 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. or

(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 and all other personal property and improvements which Lessee has installed on the Leased Premises and Easement(s) (except for portions of foundations 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 assignee(s) and 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 assignee(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 assignee(s) and sublessee(s) are subject to all terms and conditions of this Lease. All assignees and 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 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  
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 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:

(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 licensees.

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.

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 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 constitutes 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 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:  
\_\_\_\_\_

CITY OF PALM COAST, FLORIDA

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

Witness:  
\_\_\_\_\_

**OPTIONEE/LESSEE:**

Witness:  
\_\_\_\_\_

DIAMOND TOWERS V LLC

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

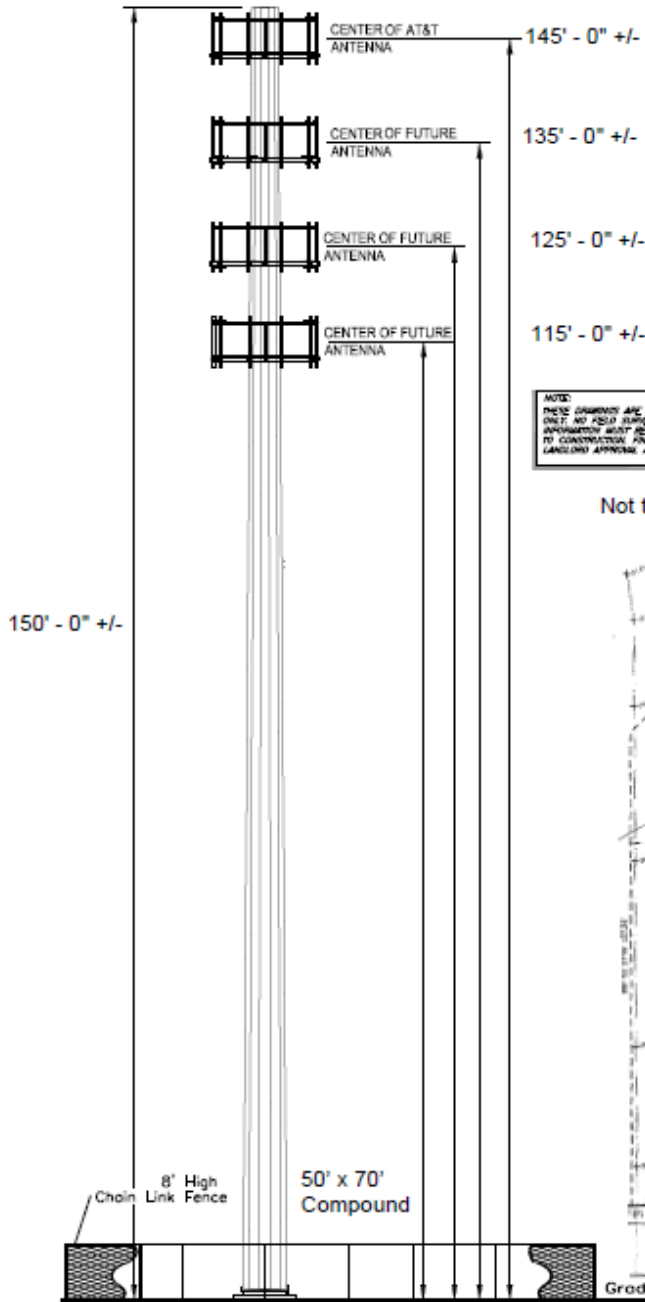
Witness:  
\_\_\_\_\_



# EXHIBIT "A"

## Description of Real Property

### Multi-User wireless communication tower



NOTE: THESE DIMENSIONS ARE FOR INFORMATIONAL PURPOSES ONLY. NO FIELD SURVEY WAS PERFORMED AND ALL INFORMATION MUST BE FIELD VERIFIED PRIOR TO CONSTRUCTION. FINAL LOCATIONS SUBJECT TO LANDLORD APPROVAL AND ZONING APPROVAL.

Not to Scale

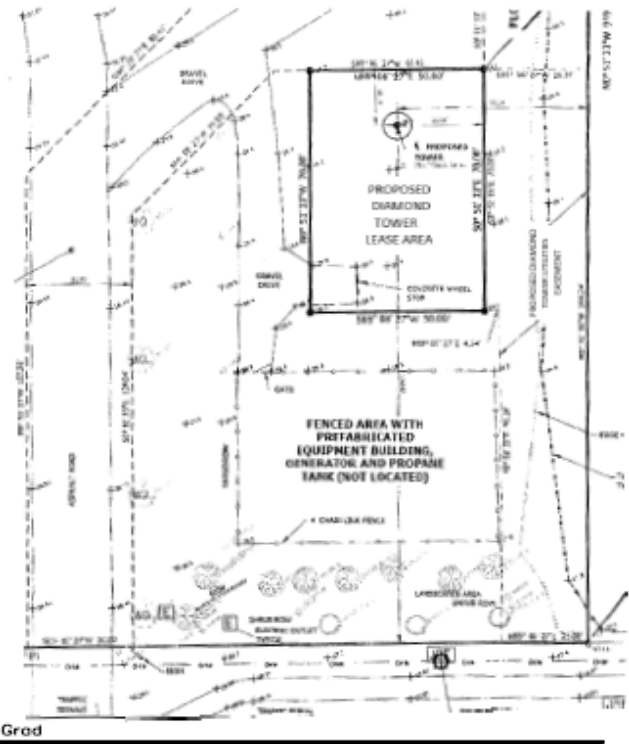


EXHIBIT "A"

Description of Real Property

**PROPOSED TOWER LEASE AREA**

A PARCEL OF LAND BEING A PORTION OF RESERVED PARCEL "C", BELLE TERRE, SECTION 13, MAP BOOK 1, PAGE 7 OF THE PUBLIC RECORDS OF FLAGLER COUNTY FLORIDA, SAID PARCEL OF LAND BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF RESERVED PARCEL "C", BELLE TERRE, SECTION 13, MAP BOOK 1, PAGE 7 OF THE PUBLIC RECORDS OF FLAGLER COUNTY FLORIDA, SAID POINT ALSO LYING ON THE NORTH RIGHT OF WAY LINE OF PALM COAST PARKWAY; THENCE N 0°51'33" W ALONG THE EAST LINE OF SAID PARCEL "C" FOR 166.24 FEET; THENCE S 89°08'27" W FOR 29.34 FEET TO A SET 5/8" REBAR & CAP "LS 6053" AND THE POINT OF BEGINNING OF THE HEREIN DESCRIBED PARCEL OF LAND; THENCE S 0°51'33" E FOR 70.00 FEET TO A SET 5/8" REBAR & CAP "LS 6053"; THENCE S 89°08'27" W FOR 50.00 FEET TO A SET 5/8" REBAR & CAP "LS 6053"; THENCE N 0°51'33" W FOR 70.00 FEET TO A SET 5/8" REBAR & CAP "LS 6053"; THENCE N 89°08'27" E FOR 50.00 FEET TO THE POINT OF BEGINNING.

SAID PARCEL OF LAND LYING AND BEING IN SECTION 14, TOWNSHIP 11 SOUTH, RANGE 30 EAST, FLAGLER COUNTY, FLORIDA AND CONTAINING 3,500 SQUARE FEET, MORE OR LESS.

**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, a Florida municipal corporation of 160 Lake Avenue, Palm Coast, FL 32164 ("**Grantor**"), and DIAMOND TOWERS V LLC, a Delaware limited liability company of 820 Morris Turnpike, Suite 104, Short Hills, NJ 07078 ("**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 No/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 Grantee 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.

*[signatures to follow]*

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

WITNESSES:

“GRANTOR”  
CITY OF PALM COAST, FLORIDA

\_\_\_\_\_

By: \_\_\_\_\_  
Jim Landon, City Manager

(print)

ATTEST:

\_\_\_\_\_

By: \_\_\_\_\_  
Virginia A. Smith, City Clerk

(print)

Date: \_\_\_\_\_

(SEAL)

STATE OF FLORIDA  
COUNTY OF FLAGLER

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

\_\_\_\_\_  
Notary Public – State of Florida  
Print Name: \_\_\_\_\_  
My Commission expires:

Witness:

**“GRANTEE”**

Diamond Towers V LLC

Name:

*Exhibit Only – Not for Signature*

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

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 \_\_\_\_\_ personally known to me or proved to me on the basis of satisfactory evidence to be the individual(s) whose name(s) is (are) subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their capacity(ies), and that by his/her/their signature(s) on the instrument, the individual(s) or the person upon behalf of which the individual(s) 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

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  
COUNTY OF ESSEX

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: \_\_\_\_\_

## **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**

**THIS WIRELESS FACILITIES CONTRACT** (“CONTRACT”) is made as of the 12<sup>th</sup> 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, [ysmith@palmcoastgov.com](mailto:ysmith@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.

l. 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.

ATTEST:

Virginia A. Smith  
Virginia A. Smith, MMC, CP

CITY OF PALM COAST, FLORIDA

By: Jim Landon  
Jim Landon, City Manager 5/12/17

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.



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

**WITNESSES:**

*Jessica Weimberg*  
Jessica Weimberg

**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 5<sup>th</sup> 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



# City of Palm Coast, Florida Agenda Item

Agenda Date: 02/06/2018

<b>Department Item Key</b>	Community Development	<b>Amount Account</b>	362,390.80 #21097011-063000-54412
<b>Subject</b>	RESOLUTION 2018-XX APPROVING A CONTRACT WITH HALIFAX PAVING, INC., FOR INTERSECTION IMPROVEMENTS TO BELLE TERRE BLVD AT SR 100 AND US 1 AT WELLFIELD GRADE (PUBLIC WORKS)		

**Background :**

**Update for the February 6, 2018 Business Meeting**

This item was heard by City Council at their January 30, 2018 Workshop. There were no changes suggested to this item.

**Original Background from the January 30, 2018 Workshop**

The City of Palm Coast intends to construct turn lanes at the intersection of SR 100 and Belle Terre Blvd and at the intersection of US 1 and Wellfield Grade (Public Works). In addition to the turn lanes, pedestrian features such as crosswalks and pedestrian signals will be upgraded. These improvements will greatly improve traffic operations and safety for the areas and increase roadway capacity.

City staff advertised and solicited bids for the Intersection Improvements Construction Project in accordance with the City's Purchasing Policy. Three (3) bids were received that were deemed to be pre-qualified, responsive, and responsible. The low bidder was Halifax Paving, Inc. with a bid of \$329,390.80. The project bid overview and notice of intent to award are attached.

City staff recommend that City Council approve a contract with Halifax Paving, Inc. in an amount of \$329,390.80. City Staff is also requesting 10% contingency of \$33,000.00 to allow for issues with unknown site conditions or unforeseen circumstances. The total amount of \$362,390.80 is within the approved Capital Improvement Plan project budget.

**SOURCE OF FUNDS WORKSHEET FY 2018**

<b>(Belle Terre SR100 Turn Lanes, GL 21097011-063000-54412)</b>	<b>\$ 395,000.00</b>
Total Expenses/Encumbered to date	\$ 8,432.94
Halifax Paving Inc. Contracts	\$ 329,390.80
10% Contingency	<u>\$ 33,000.00</u>
<b>Balance</b>	<b>\$ 24,176.26</b>

**Recommended Action :**

Adopt Resolution 2018-XX approving a contract with Halifax Paving, Inc., for intersection improvements to Belle Terre Blvd at SR 100 and US 1 at Wellfield Grade (Public Works).

**RESOLUTION 2018 - \_\_\_\_\_**  
**CONTRACT WITH HALIFAX PAVING, INC., FOR INTERSECTION IMPROVEMENTS TO BELLE TERRE BLVD AT SR 100 AND US 1 AT WELLFIELD GRADE (PUBLIC WORKS)**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING A CONTRACT WITH HALIFAX PAVING, INC., FOR INTERSECTION IMPROVEMENTS TO BELLE TERRE BLVD AT SR 100 AND US 1 AT WELLFIELD GRADE (PUBLIC WORKS); AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE THE CONTRACT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** Halifax Paving, Inc. desires to construct the improvements to Belle Terre Blvd at SR 100 and US 1 at Wellfield Grade (Public Works), the City of Palm Coast; and

**WHEREAS,** the City Council of the City of Palm Coast desires to contract with Halifax Paving, Inc., for intersection improvements to Belle Terre Blvd at SR 100 and US 1 at Wellfield Grade (Public Works).

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

**SECTION 1. APPROVAL OF CONTRACT.** The City Council of the City of Palm Coast hereby approves the terms and conditions of a contract with Halifax Paving, Inc., as referenced herein and attached hereto as Exhibit “A.”

**SECTION 2. AUTHORIZATION TO EXECUTE.** The City Manager, or designee, is hereby authorized to execute the Contract 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 ADOPTED** by the City Council of the City of Palm Coast, Florida, on this 6th day February 2018

**CITY OF PALM COAST, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
MILISSA HOLLAND, MAYOR

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

Attachment: Exhibit "A" – Contract with Halifax Paving, Inc.

Approved as to form and legality

\_\_\_\_\_  
William E. Reischmann, Jr., Esq.  
City Attorney



# City of PALM COAST

**Administrative Services & Economic Development**  
Central Services Division

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

## NOTICE OF INTENT TO AWARD

**Project: ITB-CD-CME-18-16 Intersection Improvements Construction Project**

**Date:** January 4, 2018

**Appeal Deadline:** Appeals must be Filed by 5:00 PM on January 8, 2018

Firm	Bid
<b>Halifax Paving, Inc.</b> Ormond Beach, FL	<b>\$329,390.80</b>
<b>S.E. Cline Construction, Inc.</b> Palm Coast, FL	\$392,505.39
<b>MASCI</b> Port Orange, FL	\$595,860.63
<b>Petticoat-Schmitt Civil Contractors, Inc.</b> Jacksonville, FL	No Bid

**The intent of the City of Palm Coast is to award ITB-CD-CME-18-06 Intersection Improvements Construction Project to Halifax Paving, Inc.**

*Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Central Service Division's Bid Protest procedures.*

*A proposer may protest matters involving the award of this Bid within three (3) business days from the posting of this recommendation to award. Failure to protest to the City's Administrative Services and Economic Development Director, Beau Falgout (bfaigout@palmcoastgov.com) shall constitute a waiver of the protest proceedings.*

*Any decision of the Administrative Services and Economic Development Director may be appealed to the City Manager by filing a written appeal to the City Manager within seven (7) days of the Administrative Services and Economic Development Director's decision. Any decision of the City Manager may be appealed to the City Council by filing a written appeal to the City Clerk within seven (7) days of the City Manager's decision. The same procedures as above shall apply to contest the award of the contract.*





# ITB-CD-CME-18-06 - Intersection Improvements Construction Project

## Project Overview

<b>Project Details</b>	
<b>Reference ID</b>	ITB-CD-CME-18-06
<b>Project Name</b>	Intersection Improvements Construction Project
<b>Project Owner</b>	Jesse Scott
<b>Project Type</b>	ITB
<b>Department</b>	Procurement
<b>Budget</b>	\$0.00 - \$0.00
<b>Project Description</b>	This Invitation to Bid is issued for the purpose of constructing turn lanes and pedestrian features at the following intersections: • SR 100 at Belle Terre Blvd • US 1 at Wellfield Drive
<b>Open Date</b>	Oct 25, 2017 8:00 AM EDT
<b>Close Date</b>	Nov 16, 2017 2:00 PM EST

<b>Awarded Suppliers</b>	<b>Reason</b>	<b>Score</b>
Halifax Paving, Inc.		100 pts

## Seal status



Requested Information	Unsealed on	Unsealed by
Pre-Qualification Forms A-M	Nov 16, 2017 2:09 PM EST	Jesse Scott
Financial Statements Form N	Nov 16, 2017 2:10 PM EST	Jesse Scott
All Bid Forms (Section 00200)	Dec 19, 2017 2:14 PM EST	Jesse Scott
Addenda signed and dated	Dec 19, 2017 2:15 PM EST	Jesse Scott

## Conflict of Interest

# Declaration of Conflict of Interest You have been chosen as a Committee member for this Evaluation. Please read the following information on conflict of interest to see if you have any problem or potential problem in serving on this committee. ## Code of Conduct All information related to submissions received from Suppliers or Service Providers must be kept confidential by Committee members. ## Conflict of Interest No member of a Committee shall participate in the evaluation if that Committee member or any member of his or her immediate family: \* has direct or indirect financial interest in the award of the contract to any proponent; \* is currently employed by, or is a consultant to or under contract to a proponent; \* is negotiating or has an arrangement concerning future employment or contracting with any proponent; or, \* has an ownership interest in, or is an officer or director of, any proponent. Please sign below acknowledging that you have received and read this information. If you have a conflict or potential conflict, please indicate your conflict on this acknowledgment form with information regarding the conflict. I have read and understood the provisions related to the conflict of interest when serving on the Evaluation Committee. If any such conflict of interest arises during the Committee's review of this project, I will immediately report it to the Purchasing Director.

Name	Date Signed	Has a Conflict of Interest?
Alex Blake	Nov 16, 2017 5:08 PM EST	No
Sean Castello	Nov 16, 2017 10:58 PM EST	No
Mike Peel	Nov 20, 2017 8:14 AM EST	No
Helena Alves	Nov 21, 2017 7:57 AM EST	No
Jesse Scott	Nov 16, 2017 2:11 PM EST	No



## Project Criteria

Criteria	Points	Description
Pre-Qualification Forms	Pass/Fail	All Pre-Qualification Forms completed and received.
Pre-Qualification Review	Pass/Fail	Pre-Qualification Review
Financial	Pass/Fail	Financial Review
Addenda	Pass/Fail	Signed and Dated
Bid Forms - Section 00200	Pass/Fail	Bid Forms Review
Bid Forms - Section 00200	100 pts	Pricing Review
<b>Total</b>	<b>100 pts</b>	



# Scoring Summary

## Active Submissions

	<b>Total</b>	<b>Pre-Qualification Forms</b>	<b>Pre-Qualification Review</b>	<b>Financial</b>	<b>Addenda</b>
<b>Supplier</b>	<b>/ 100 pts</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>
Halifax Paving, Inc.	100 pts	Pass	Pass	Pass	Pass
S.E. Cline Construction, Inc.	83.92 pts	Pass	Mixed	Pass	Pass
MASCI	55.28 pts	Pass	Pass	Pass	Pass

	<b>Bid Forms - Section 00200</b>	<b>Bid Forms - Section 00200</b>
<b>Supplier</b>	<b>Pass/Fail</b>	<b>/ 100 pts</b>



	<b>Bid Forms - Section 00200</b>	<b>Bid Forms - Section 00200</b>
<b>Supplier</b>	<b>Pass/Fail</b>	<b>/ 100 pts</b>
Halifax Paving, Inc.	Pass	100 pts (\$329,390.80)
S.E. Cline Construction, Inc.	Mixed	83.92 pts (\$392,505.39)
MASCI	Mixed	55.28 pts (\$595,860.63)

## Eliminated Submissions

	<b>Pre-Qualification Forms</b>	<b>Pre-Qualification Review</b>	<b>Financial</b>	<b>Addenda</b>	<b>Bid Forms - Section 00200</b>
<b>Supplier</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>
Petticoat-Schmitt Civil Contractors, Inc.	Pass	Pass	Pass	Fail	Fail



	<b>Pre-Qualification Forms</b>	<b>Pre-Qualification Review</b>	<b>Financial</b>	<b>Addenda</b>	<b>Bid Forms - Section 00200</b>
<b>Supplier</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>
P&S Paving Inc.	Pass	Mixed	-	-	-

	<b>Bid Forms - Section 00200</b>
<b>Supplier</b>	<b>/ 100 pts</b>
Petticoat-Schmitt Civil Contractors, Inc.	100 pts (\$500,000.00)
P&S Paving Inc.	-



## Reason

Supplier	Disqualified by	Reason
P&S Paving Inc.	Jesse Scott	P&S original submission on 11/8 did not include completed forms A-M and did not include signed copies of the Addendums. Post closing documentation is not valid. As a result of original submission being unresponsive, submission will not meet qualification requirements.
Petticoat-Schmitt Civil Contractors, Inc.	Jesse Scott	No submission for bid portion on this project.

# City of Palm Coast, Florida Agenda Item

Agenda Date: 02/062018

<b>Department</b> UTILITY	<b>Amount</b> \$145,000.00
<b>Item Key</b>	<b>Account</b> # 54029086-063000-84002
<b>Subject</b> RESOLUTION 2018-XX APPROVE A CONTRACT WITH INTEGRITY MUNICIPAL SYSTEMS, LLC FOR THE REPLACEMENT OF THE LIME SLAKING SYSTEM AT WATER TREATMENT PLANT #1	
<b>Background :</b>	
<b><u>Update for the February 6, 2018 Business Meeting</u></b>	
This item was heard by City Council at their January 30, 2018 Workshop. There were no changes suggested to this item.	
<b><u>Original Background from the January 30, 2018 Workshop</u></b>	
The City of Palm Coast Utility Department owns and operates a 6.0 million gallon per day water treatment facility (Water Treatment Plant 1) located at 4 Corporate Drive North in Palm Coast. Water Treatment Plant 1 has a 1000 lb. per hour lime slaker that is in need of replacement due to its age. The 1000 lb. per hour lime slaker is used in the treatment process to soften water.	
City staff advertised and solicited bids for replacement of a paste-type lime slaking system. The City received one (1) bids which were responsive and responsible. The low bidder was Integrity Municipal Systems, LLC of Poway, CA with a bid of \$145,000.00. The project bid overview and notice of intent to award are attached.	
Staff recommends City Council approve a contract with Integrity Municipal Systems for the replacement of the lime slaking system at Water Treatment Plant #1 at a cost not-to-exceed \$145,000.00. The replacement of this equipment is budgeted under the Utility Capital Improvement Fund, Renewals and Replacements.	
<b>SOURCE OF FUNDS WORKSHEET FY 2018</b>	
<b>(CAPITAL R&amp;R-54029086-063000-84002)</b>	<b>\$ 280,000.00</b>
Total Expended/Encumbered to Date	\$ 113,570.43
Pending Work Orders/Contracts	\$
Current Work Order	\$ 145,000.00
<b>Balance</b>	<b>\$ 21,249.57</b>
<b>Recommended Action :</b>	
Adopt Resolution 2018-XX approving a contract with Integrity Municipal Systems, LLC for the replacement of the lime slaking system at Water Treatment Plant #1.	



**RESOLUTION 2018-\_\_\_\_**  
**CONTRACT WITH INTEGRITY MUNICIPAL SYSTEMS, LLC FOR THE**  
**REPLACEMENT OF THE LIME SLAKING SYSTEM AT WTP#1**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING A CONTRACT WITH INTEGRITY MUNICIPAL SYSTEMS, LLC FOR THE REPLACEMENT OF THE LIME SLAKING SYSTEM AT WATER TREATMENT PLANT #1; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE THE NECESSARY DOCUMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Palm Coast’s Utility Department desires to purchase a 1000 lb. per hour lime slaker; and

**WHEREAS**, Integrity Municipal Systems desires to furnish the aforementioned 1000 lb. per hour lime slaker for the City of Palm Coast; and

**WHEREAS**, the City of Palm Coast desires to contract for the above referenced for the purchase of the 1000 lb. per hour lime slaker

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

**SECTION 1. APPROVAL OF CONTRACT.** The City Council of the City of Palm Coast hereby approves the terms and conditions of a contract with Integrity Municipal Systems, 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 necessary documents.

**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 ADOPTED** by the City Council of the City of Palm Coast, Florida, on this 6<sup>th</sup> day of February 2018.

**CITY OF PALM COAST, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
MILISSA HOLLAND, MAYOR

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

Attachment: Notice of Intent to award

Approved as to form and legality

\_\_\_\_\_  
William E. Reischmann, Jr., Esq.  
City Attorney



# city of PALM COAST

**Administrative Services & Economic Development**  
Central Services Division

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

## **NOTICE OF INTENT TO AWARD**

**Project: ITB-UT-WD-18-18 Replacement of a paste-type lime slaking system in Water Treatment Plant #1.**

**Date:** January 17, 2018

**Appeal Deadline:** Appeals must be Filed by 5:00 PM on January 20, 2018

Firm	Bid
Integrity Municipal Systems, LLC Poway, CA	<b>\$145,000</b>

**The intent of the City of Palm Coast is to award ITB-UT-WD-18-18 Replacement of a Paste-Type Lime Slaking System in Water Treatment Plant #1 to Integrity Municipal Systems, LLC.**

*Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Central Service Division's Bid Protest procedures.*

*A proposer may protest matters involving the award of this Bid within three (3) business days from the posting of this recommendation to award. Failure to protest to the City's Administrative Services and Economic Development Director, Beau Falgout (bfaulgout@palmcoastgov.com) shall constitute a waiver of the protest proceedings.*

*Any decision of the Administrative Services and Economic Development Director may be appealed to the City Manager by filing a written appeal to the City Manager within seven (7) days of the Administrative Services and Economic Development Director's decision. Any decision of the City Manager may be appealed to the City Council by filing a written appeal to the City Clerk within seven (7) days of the City Manager's decision. The same procedures as above shall apply to contest the award of the contract.*



# ITB-UT-WD-18-18 - Invitation to Bid for Replacement of a Paste-Type Lime Slaking System in Water Treatment Plant #1.

## Project Overview

<b>Project Details</b>	
<b>Reference ID</b>	ITB-UT-WD-18-18
<b>Project Name</b>	Invitation to Bid for Replacement of a Paste-Type Lime Slaking System in Water Treatment Plant #1.
<b>Project Owner</b>	Jesse Scott
<b>Project Type</b>	ITB
<b>Department</b>	Procurement
<b>Budget</b>	\$0.00 - \$0.00
<b>Project Description</b>	<p>The City of Palm Coast intends to purchase a Paste-Type, non-PLC based Lime Slaking System to replace one of the three existing slaking systems in operation at Water Treatment Plant #1 (WTP1). Demonstrated experience in design, fabrication and testing of paste-type lime slaking equipment of the size, materials and scope outlined herein, is one key point critical to supplier selection.</p>
<b>Open Date</b>	Nov 29, 2017 8:00 AM EST
<b>Close Date</b>	Jan 11, 2018 2:00 PM EST

<b>Awarded Suppliers</b>	<b>Reason</b>	<b>Score</b>
<b>Integrity Municipal Systems, LLC</b>		<b>100 pts</b>



## Seal status

Requested Information	Unsealed on	Unsealed by
Required Forms (A, B, D, 1-10)	Jan 11, 2018 2:01 PM EST	Jesse Scott
Required Form "C" Pricing	Jan 11, 2018 2:02 PM EST	Jesse Scott
Required Letter/Documentation of Vendor Experience	Jan 11, 2018 2:02 PM EST	Jesse Scott

## Conflict of Interest

# Declaration of Conflict of Interest You have been chosen as a Committee member for this Evaluation. Please read the following information on conflict of interest to see if you have any problem or potential problem in serving on this committee. ## Code of Conduct All information related to submissions received from Suppliers or Service Providers must be kept confidential by Committee members. ## Conflict of Interest No member of a Committee shall participate in the evaluation if that Committee member or any member of his or her immediate family: \* has direct or indirect financial interest in the award of the contract to any proponent; \* is currently employed by, or is a consultant to or under contract to a proponent; \* is negotiating or has an arrangement concerning future employment or contracting with any proponent; or, \* has an ownership interest in, or is an officer or director of, any proponent. Please sign below acknowledging that you have received and read this information. If you have a conflict or potential conflict, please indicate your conflict on this acknowledgment form with information regarding the conflict. I have read and understood the provisions related to the conflict of interest when serving on the Evaluation Committee. If any such conflict of interest arises during the Committee's review of this project, I will immediately report it to the Purchasing Director.

Name	Date Signed	Has a Conflict of Interest?
Donald Holcomb	Jan 11, 2018 2:02 PM EST	No
Jim Hogan	Jan 13, 2018 9:54 AM EST	No
Rose Conceicao	Jan 23, 2018 9:38 AM EST	No
Jesse Scott	Jan 11, 2018 2:03 PM EST	No
Carrie Hyde	Jan 16, 2018 8:27 AM EST	No



## Project Criteria

Criteria	Points	Description
Required Forms	Pass/Fail	All required forms were submitted
Pricing	100 pts	Pricing Evaluation
Letter/Documentation of Vendor Experience	Pass/Fail	Letter submitted to provide documentation and examples to demonstrate the vendor has a minimum of five (5) years of experience in the design, fabrication and testing of paste-type lime slaking equipment of the size, materials and scope herein, showing evidence of at least ten (10) identical design installations (paste slaker, mechanical torque valve, conveyor type grit remover) in satisfactory operation for at least three (3) years.
<b>Total</b>	<b>100 pts</b>	



## Scoring Summary

### Active Submissions

	<b>Total</b>	<b>Required Forms</b>	<b>Pricing</b>	<b>Letter/Documentation of Vendor Experience</b>
<b>Supplier</b>	<b>/ 100 pts</b>	<b>Pass/Fail</b>	<b>/ 100 pts</b>	<b>Pass/Fail</b>
Integrity Municipal Systems, LLC	100 pts	Pass	100 pts (\$145,000.00)	Pass

## City of Palm Coast, Florida Agenda Item

Agenda Date: 02/06/2018

<b>Department</b> UTILITY	<b>Amount</b> \$ 118,000.00
<b>Item Key</b>	<b>Account</b> # 54019086-034000
<b>Subject</b> RESOLUTION 2018-XX APPROVING A CONTRACT WITH PRO LIME CORPORATION FOR LIME SLUDGE REMOVAL, HAULING AND DISPOSAL	
<b>Background :</b>	
<p><b><u>Update for the February 6, 2018 Business Meeting</u></b>            This item was heard by City Council at their January 30, 2018 Workshop. There were no changes suggested to this item.</p> <p><b><u>Original Background from the January 30, 2018 Workshop</u></b>            The City of Palm Coast Utility Department owns and operates a 6.0 million gallon per day water treatment facility (Water Treatment Plant 1) located at 4 Corporate Drive in Palm Coast. Water Treatment Plant 1 has approximately 7,000 cubic yards of lime sludge that needs to be removed, hauled and disposed of from the sludge drying bed.</p> <p>City staff advertised and solicited bids for lime sludge removal, hauling and disposal services on an as-needed basis. The City received one (1) bid which were responsive and responsible. Pro Lime Corporation is the low bidder with a price of \$16.85 per cubic yard. The project bid overview and notice of intent to award are attached.</p> <p>City staff recommend City Council approve a contract with Pro Lime Corporation, for the lime sludge removal, hauling and disposal of sludge from Water Treatment Plant 1. Since the underlying contract is a price agreement, City staff will purchase items on an as –needed basis using budgeted funds appropriated by City Council. The Fiscal Year 2018 Budget includes available funding in the Utility Department – Operations and Maintenance Fund to purchase lime sludge removal, hauling and disposal services. City staff estimates that we will expend a total of \$118,000 annually under this contract.</p>	
<b>Recommended Action:</b>	
Adopt Resolution 2018-xx approving a contract with Pro Lime Corporation for lime sludge removal, hauling and disposal.	





# city of PALM COAST

**Administrative Services & Economic Development**  
Central Services Division

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

## NOTICE OF INTENT TO AWARD

**Project:** ITB-UT-18-21 Lime Sludge Removal, Hauling and Disposal

**Date:** December 19, 2017

**Appeal Deadline:** Appeals must be Filed by 5:00 PM on December 21, 2017

Firm	Price
<b>ProLime Corporation</b> Washington, MI	\$16.85 per cubic yard

The intent of the City of Palm Coast is to award ITB-UT-18-21 to ProLime Corporation.

*Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Central Service Division's Bid Protest procedures.*

*A proposer may protest matters involving the award of this Bid within three (3) business days from the posting of this recommendation to award. Failure to protest to the City's Acting Purchasing Manager, Beau Falgout (bfaulgout@palmcoastgov.com) shall constitute a waiver of the protest proceedings.*

*Any decision of the Acting Purchasing Manager may be appealed to the City Manager by filing a written appeal to the City Manager within seven (7) days of the Acting Purchasing Manager's decision. Any decision of the City Manager may be appealed to the City Council by filing a written appeal to the City Clerk within seven (7) days of the City Manager's decision. The same procedures as above shall apply to contest the award of the contract.*

**RESOLUTION 2018 - \_\_\_\_\_**  
**LIME SLUDGE REMOVAL, HAULING AND DISPOSAL**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA APPROVING A CONTRACT WITH PRO LIME CORPORATION FOR LIME SLUDGE REMOVAL, HAULING AND DISPOSAL; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE THE CONTRACT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Pro Lime Corporation, has expressed a desire to provide the Lime Sludge Removal, Hauling and Disposal services for Water Treatment Plant # 1; and

**WHEREAS**, the City Council of the City of Palm Coast desires to issue a contract to Pro Lime Corporation, for the above mentioned services.

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

**SECTION 1. APPROVAL OF CONTACT.** The City Council of the City of Palm Coast hereby approves the terms and conditions of the contract with Pro Lime Corporation, 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 necessary documents.

**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 ADOPTED** by the City Council of the City of Palm Coast, Florida, on this 6<sup>th</sup> day of February, 2018.

**CITY OF PALM COAST, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
MILISSA HOLLAND, MAYOR

\_\_\_\_\_  
VIRGINIA SMITH, CITY CLERK

Attachments: Exhibit "A" – Contract with Pro Lime Corporation

Approved as to form and legality

\_\_\_\_\_  
William E. Reischmann, Jr., Esq.  
City Attorney



# ITB-UT-18-21 - Lime Sludge Removal, Hauling and Disposal

## Project Overview

Project Details	
Reference ID	ITB-UT-18-21
Project Name	Lime Sludge Removal, Hauling and Disposal
Project Owner	Kelly Downey
Project Type	ITB
Department	Procurement
Budget	\$0.00 - \$0.00
Project Description	The City of Palm Coast Utility Department is soliciting proposals from qualified companies to provide lime sludge removal, hauling and disposal from Water Treatment Plant # 1.
Open Date	Nov 15, 2017 8:00 AM EST
Close Date	Dec 14, 2017 2:00 PM EST

Awarded Suppliers	Reason	Score
Prolime Corporation		100 pts



## Seal status

Requested Information	Unsealed on	Unsealed by
Required Forms (A, B, D, 1-10)	Dec 14, 2017 2:18 PM EST	Kelly Downey
Pricing - Form C	Dec 14, 2017 2:18 PM EST	Kelly Downey

## Conflict of Interest

# Declaration of Conflict of Interest You have been chosen as a Committee member for this Evaluation. Please read the following information on conflict of interest to see if you have any problem or potential problem in serving on this committee. ## Code of Conduct All information related to submissions received from Suppliers or Service Providers must be kept confidential by Committee members. ## Conflict of Interest No member of a Committee shall participate in the evaluation if that Committee member or any member of his or her immediate family: \* has direct or indirect financial interest in the award of the contract to any proponent; \* is currently employed by, or is a consultant to or under contract to a proponent; \* is negotiating or has an arrangement concerning future employment or contracting with any proponent; or, \* has an ownership interest in, or is an officer or director of, any proponent. Please sign below acknowledging that you have received and read this information. If you have a conflict or potential conflict, please indicate your conflict on this acknowledgment form with information regarding the conflict. I have read and understood the provisions related to the conflict of interest when serving on the Evaluation Committee. If any such conflict of interest arises during the Committee's review of this project, I will immediately report it to the Purchasing Director.

Name	Date Signed	Has a Conflict of Interest?
Kelly Downey	Dec 14, 2017 2:19 PM EST	No
Donald Holcomb	Dec 15, 2017 7:16 AM EST	No
Fred Greiner	Dec 19, 2017 2:35 PM EST	No



## Project Criteria

Criteria	Points	Description
Required Forms	Pass/Fail	All required forms were submitted
Pricing	100 pts	Pricing Evaluation
<b>Total</b>	<b>100 pts</b>	



## Scoring Summary

### Active Submissions

	<b>Total</b>	<b>Required Forms</b>	<b>Pricing</b>
<b>Supplier</b>	<b>/ 100 pts</b>	<b>Pass/Fail</b>	<b>/ 100 pts</b>
Prolime Corporation	100 pts	Pass	100 pts (\$16.85)

# City of Palm Coast, Florida Agenda Item

Agenda Date: 02/06/2018

<b>Department Item Key</b>	COMMUNITY DEVELOPMENT	<b>Amount Account</b>
<b>Subject</b>	RESOLUTION 2018 XX APPROVING MASTER SERVICES AGREEMENTS WITH MULTIPLE FIRMS FOR ARCHITECTURAL SERVICES ON AN AS-NEEDED BASIS	
<b>Background :</b>		
<b><u>Update for the February 6, 2018 Business Meeting</u></b>		
This item was heard by City Council at their January 30, 2018 Workshop. There were no changes suggested to this item.		
<b><u>Original Background from the January 30, 2018 Workshop</u></b>		
From time to time, the City needs the following architectural services: information gathering, conceptual design, cost estimates, final design, contract documents preparation, construction drawings, technical specifications, coordination of special services, bid recommendations, construction inspections, permitting services, drafting services and other related services.		
In accordance with the City's Purchasing Policy and Florida Statutes, City staff advertised and solicited qualifications for architectural services on an as-needed basis. The City received nine (9) qualification packages, eight (8) of which were deemed to be responsive and responsible. The Evaluation Committee ranked the qualification packages and recommended the top four (4) firms based on the evaluation criteria. The notice of intent to award and project bid overview are attached.		
The top four (4) firms are as follows:		
<ul style="list-style-type: none"> <li>• Mead &amp; Hunt, Inc., Port Orange, FL</li> <li>• Joseph Pozzuoli Architect, Flagler Beach, FL</li> <li>• Bentley Architects &amp; Engineers, Inc., Longwood, FL</li> <li>• Pond &amp; Company, Jacksonville, FL</li> </ul>		
City staff recommend that City Council approve Master Service Agreements with Mead & Hunt, Inc., Joseph Pozzuoli Architect, Bentley Architects & Engineers, and Pond & Company for architectural services on an as-needed basis. There is no expenditure associated with the current action.		
<b>Recommended Action :</b>		
Adopt Resolution 2018-XX approving master services agreements with multiple firms for architectural services on an as-needed basis.		



**RESOLUTION 2018- \_\_\_\_\_**

**CONTINUING SERVICE CONTRACTS  
FOR ARCHITECTURAL SERVICES**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA APPROVING THE CONTINUING SERVICES CONTRACTS FOR ARCHITECTURAL SERVICES; 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**, numerous firms have expressed a desire to provide architectural services throughout the City of Palm Coast; and

**WHEREAS**, staff has ranked the firms that have responded to the City's Request for Qualifications (RFQ); and

**WHEREAS**, Mead & Hunt, Inc, Port Orange, FL, Joseph Pozzuoli Architect, Flagler Beach, FL, Bentley Architects & Engineers, Inc., Longwood FL., and Pond & Company, Jacksonville, FL, have been ranked, in accordance with the controlling requirements of State law, as the four (4) top ranked firms; and

**WHEREAS**, the City Council of the City of Palm Coast desires to negotiate contracts with the top four (4) ranked firms for architectural services throughout the City of Palm Coast.

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

**SECTION 1. APPROVAL OF AGREEMENTS.** The City Council of the City of Palm Coast hereby authorizes the City Manager to negotiate contracts with Mead & Hunt, Inc., Port Orange, FL, Joseph Pozzuoli Architect, Flagler Beach, FL, Bentley Architects & Engineers, Inc., Longwood FL., and Pond & Company, Jacksonville, FL, for architectural services. If terms cannot be reached with these firms, the City Manager is authorized to negotiate with the next ranked firm.

**SECTION 2. AUTHORIZATION TO EXECUTE.** The City Manager, or designee, is hereby authorized to execute the agreements 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 actions 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 1<sup>st</sup> day of February 2018.

**CITY OF PALM COAST, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
Milissa Holland, Mayor

\_\_\_\_\_  
Virginia A. Smith, City Clerk

Attachments:

Exhibit “A” – Agreements Mead & Hunt, Inc., Port Orange, FL, Joseph Pozzuoli Architect, Flagler Beach, FL, Bentley Architects & Engineers, Inc., Longwood FL., and Pond & Company, Jacksonville, FL

Approved as to form and legality

\_\_\_\_\_  
William E. Reischmann, Jr., Esq.  
City Attorney



# City of PALM COAST

Administrative Services & Economic Development  
Central Services Division

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

## NOTICE OF INTENT TO AWARD

**Project:** RFSQ-CD-CME-18-12 Architectural Services

**Date:** December 8, 2017

**Appeal Deadline:** Appeals must be Filed by 5:00 PM on December 13, 2017

Firm	Ranking Order
<b>Mead &amp; Hunt, Inc.</b> Port Orange, FL	1
<b>Joseph Pozzuoli Architect</b> Flagler Beach, FL	2
<b>Bentley Architects &amp; Engineers, Inc.</b> Longwood, FL	3
<b>Pond &amp; Company</b> Jacksonville, FL	4
<b>CPH, Inc.</b> Palm Coast, FL	5
<b>Bhide &amp; Hall Architects, P.A.</b> Orange Park, FL	6
<b>PQH Group</b> Jacksonville, FL	7
<b>Architecture Studio, Inc.</b> Ocala, FL	8
<b>Bergmann Associates</b> Jacksonville, FL	Non Responsive

The intent of the City of Palm Coast is to award RFSQ-CD-CME-18-12 to Mead & Hunt, Inc., Joseph Pozzuoli Architect, Bentley Architects & Engineers, Inc. and Pond & Company.



# city of PALM COAST

**Administrative Services & Economic Development**  
Central Services Division

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

*Bid protests arising under City Bidding Documents or Procedures shall be resolved under the City of Palm Coast Central Service Division's Bid Protest procedures.*

*A proposer may protest matters involving the award of this bid within three (3) business days from the posting of this recommendation to award. Failure to protest to the City's Administrative Services and Economic Development Director, Beau Falgout (bfalgout@palmcoastgov.com) shall constitute a waiver of the protest proceedings.*

*Any decision of the Administrative Services and Economic Development Director may be appealed to the City Manager by filing a written appeal to the City Manager within seven (7) days of the Administrative Services and Economic Development Director's decision. Any decision of the City Manager may be appealed to the City Council by filing a written appeal to the City Clerk within seven (7) days of the City Manager's decision. The same procedures as above shall apply to contest the award of the contract.*





# RFSQ-CD-CME-18-12 - Architectural Services

## Project Overview

<b>Project Details</b>	
<b>Reference ID</b>	RFSQ-CD-CME-18-12
<b>Project Name</b>	Architectural Services
<b>Project Owner</b>	Kelly Downey
<b>Project Type</b>	RFSQ
<b>Department</b>	Procurement
<b>Budget</b>	\$0.00 - \$0.00
<b>Project Description</b>	<p>The purpose of this Request for Supplier Qualifications (RFSQ) is for The City of Palm Coast to receive responses from qualified firms capable of providing Architect/Engineering (A/E) Services for minor projects for the City. Firms should have demonstrated competence in the following areas:</p> <ul style="list-style-type: none"><li>• Planning, studies and evaluation of existing facilities.</li><li>• Computer-aided construction documents, including all supporting documents in conformance with building and related codes, rules and regulation of agencies having jurisdiction</li><li>• As-built ACAD drawings</li><li>• Construction administration for the duration of the project and/or contract</li><li>• Presentation documents utilizing BIM, REVIT or other 3-D presentation software</li></ul>
<b>Open Date</b>	Oct 25, 2017 8:00 AM EDT
<b>Close Date</b>	Nov 30, 2017 2:00 PM EST



Awarded Suppliers	Reason	Score
Mead & Hunt, Inc.		93.17 pts
Joseph Pozzuoli Architect		88.33 pts
Pond & Company		85.33 pts
Bentley Architects + Engineers, Inc.		87.67 pts

### Seal status

Requested Information	Unsealed on	Unsealed by
RFSQ Proposal	Nov 30, 2017 2:16 PM EST	Kelly Downey
Required Forms	Nov 30, 2017 2:16 PM EST	Kelly Downey

### Conflict of Interest

# Declaration of Conflict of Interest You have been chosen as a Committee member for this Evaluation. Please read the following information on conflict of interest to see if you have any problem or potential problem in serving on this committee. ## Code of Conduct All information related to submissions received from Suppliers or Service Providers must be kept confidential by Committee members. ## Conflict of Interest No member of a Committee shall participate in the evaluation if that Committee member or any member of his or her immediate family: \* has direct or indirect financial interest in the award of the contract to any proponent; \* is currently employed by, or is a consultant to or under contract to a proponent; \* is negotiating or has an arrangement concerning future employment or contracting with any proponent; or, \* has an ownership interest in, or is an officer or director of, any proponent. Please sign below acknowledging that you have received and read this information. If you have a conflict or potential conflict, please indicate your conflict on this acknowledgment form with information regarding the conflict. I have read and understood the provisions related to the conflict of interest when serving on the Evaluation



Committee. If any such conflict of interest arises during the Committee's review of this project, I will immediately report it to the Purchasing Director.

Name	Date Signed	Has a Conflict of Interest?
Kelly Downey	Nov 30, 2017 2:17 PM EST	No
Carl Cote	Dec 05, 2017 1:42 PM EST	No
Mary Kronenberg	Nov 30, 2017 4:12 PM EST	No
Susan Knopf	Dec 01, 2017 9:15 AM EST	No



## Project Criteria

Criteria	Points	Description
Required Forms	Pass/Fail	Forms A, B, 1 - 10
Required Submittal / Table of Contents	Pass/Fail	Letter of Introduction/Table of Contents submitted
Architectural Team	50 pts	Architectural Team
Previous Experience	15 pts	Previous Architectural Experience
Project Understanding	25 pts	Project Understanding
Location	10 pts	Location
<b>Total</b>	<b>100 pts</b>	





## Scoring Summary

### Active Submissions

	Total	Required Forms	Required Submittal / Table of Contents	Architectural Team	Previous Experience
Supplier	/ 100 pts	Pass/Fail	Pass/Fail	/ 50 pts	/ 15 pts
Mead & Hunt, Inc.	93.17 pts	Pass	Pass	46.33 pts	14.33 pts
Joseph Pozzuoli Architect	88.33 pts	Pass	Pass	41.67 pts	14.67 pts
Bentley Architects + Engineers, Inc.	87.67 pts	Pass	Pass	44.33 pts	14 pts
Bergmann Associates	86.33 pts	Fail	Pass	44.33 pts	13 pts



	<b>Total</b>	<b>Required Forms</b>	<b>Required Submittal / Table of Contents</b>	<b>Architectural Team</b>	<b>Previous Experience</b>
<b>Supplier</b>	<b>/ 100 pts</b>	<b>Pass/Fail</b>	<b>Pass/Fail</b>	<b>/ 50 pts</b>	<b>/ 15 pts</b>
Pond & Company	85.33 pts	Pass	Pass	41.33 pts	14 pts
CPH, Inc.	83 pts	Pass	Pass	38.33 pts	12.33 pts
Bhide & Hall Architects, P.A.	79.67 pts	Pass	Pass	38.33 pts	14 pts
PQH Group	78.33 pts	Pass	Pass	39.33 pts	13.33 pts
Architecture Studio, Inc.	70.17 pts	Pass	Pass	33.33 pts	14 pts

	<b>Project Understanding</b>	<b>Location</b>
<b>Supplier</b>	<b>/ 25 pts</b>	<b>/ 10 pts</b>



	<b>Project Understanding</b>	<b>Location</b>
<b>Supplier</b>	<b>/ 25 pts</b>	<b>/ 10 pts</b>
Mead & Hunt, Inc.	25 pts	7.5 pts
Joseph Pozzuoli Architect	22 pts	10 pts
Bentley Architects + Engineers, Inc.	24.33 pts	5 pts
Bergmann Associates	24 pts	5 pts
Pond & Company	25 pts	5 pts
CPH, Inc.	22.33 pts	10 pts
Bhide & Hall Architects, P.A.	22.33 pts	5 pts



	<b>Project Understanding</b>	<b>Location</b>
<b>Supplier</b>	<b>/ 25 pts</b>	<b>/ 10 pts</b>
PQH Group	20.67 pts	5 pts
Architecture Studio, Inc.	20.33 pts	2.5 pts

# City of Palm Coast, Florida

## Agenda Item

Agenda Date: 02/06/2018

<b>Department</b>	UTILITY	<b>Amount</b>	\$ 250,000.00
<b>Item Key</b>		<b>Account</b>	# 54029083-063000-85005
<b>Subject</b>	RESOLUTION 2018-XX APPROVING PIGGYBACKING THE LEE COUNTY CONTRACT WITH MILLER PIPELINE, INC. FOR MATERIALS AND INSTALLATION OF GRAVITY SEWER MAIN LINERS		
<b>Background :</b>			
<b><u>Update for the February 6, 2018 Business Meeting</u></b>			
This item was heard by City Council at their January 30, 2018 Workshop. There were no changes suggested to this item.			
<b><u>Original Background from the January 30, 2018 Workshop</u></b>			
As part of the ongoing program of the Utility Wastewater Collection Division to identify and eliminate sources of infiltration and inflow (I&I) into the central sewer system, it is necessary to install a liner system at various locations. This liner system will rehabilitate VCP (Vetrified Clay Pipe) in the gravity sewer system identified to be in need of repair from (CCTV) closed circuit television reports. This co-rehabilitation process consists of installing EX PVC Fold and Form Liner inside the existing pipe to eliminate infiltration of groundwater into the system. This process also includes reinstating and grouting of all connected sewer services.			
City staff is recommending that City Council approve piggybacking the Lee County Contract (RFP #170241DLK) with Miller Pipeline, Inc. through December 1, 2020 for materials and installation of gravity sewer main liners. Piggybacking existing competitively bid contracts is advantageous since the pricing is generally better than what the City could obtain on its own, and the City does not incur the expense and delay of soliciting a bid.			
Since the underlying contract is an agreement on a per unit price basis, City staff will make purchases on an as needed basis using budgeted funds appropriated by City Council. The Fiscal Year 2018 Budget includes available funding in the City's Utility budgets to purchase wastewater liner systems. City staff estimate that the City will expend approximately \$250,000 annually under this piggyback contract.			
<b>Recommended Action :</b>			
Adopt Resolution 2018-Xx approving piggybacking the Lee County Contract with Miller Pipeline, Inc. for materials and installation of gravity sewer main liners.			

**RESOLUTION 2018 - \_\_\_\_\_**  
**PIGGYBACKING LEE COUNTY CONTRACT WITH**  
**MILLER PIPELINE INC.**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING PIGGYBACKING THE LEE COUNTY CONTRACT WITH MILLER PIPELINE, INC. FOR THE LINING OF GRAVITY SEWER MAIN UTILIZING EX LINER SYSTEM; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE SAID CONTRACT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, Miller Pipeline Inc. has expressed a desire to provide contractual services for the installation of EX Liner System in Gravity Sewer Mains to the City of Palm Coast; and

**WHEREAS**, the City Council of the City of Palm Coast desires to approve a piggyback contract with Miller Pipeline Inc. on Lee County Contract #RFP172041DLK for installing EX Liner System in Gravity Sewer Mains.

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

**SECTION 1. APPROVAL OF PIGGYBACK CONTRACT.** The City Council of the City of Palm Coast hereby approves the terms and conditions of the piggyback contract between Miller Pipeline Inc. and Lee County Contract #RFP172041DLK for installation of EX Liner System in Gravity Sewer Mains.

**SECTION 2. AUTHORIZATION TO EXECUTE.** The City Manager, or designee, is hereby authorized to execute the necessary documents.

**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 ADOPTED** by the City Council of the City of Palm Coast, Florida, on this 6th day, February 2018.

**CITY OF PALM COAST, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
MELISSA HOLLAND, MAYOR

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

Attachment: Engagement Letter

Approved as to form and legality

\_\_\_\_\_  
William E. Reischmann, Jr., Esq.  
City Attorney



# City of PALM COAST

Administrative Services & Economic Development  
Central Services Division

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

January 10, 2018

Jeff Newman chris schuler  
Project Manager  
Miller Pipeline LLC  
8850 Crawfordsville Road  
Indianapolis, IN 46234

**RE: Engagement Letter Authorizing Piggyback  
Wastewater Collection System**

Contract Name  
**RFP170241DL**  
Contract Reference

Dear Jeff Newman chris schuler,

The City of Palm Coast, Florida requests permission to utilize your company's above referenced contract in accordance with the approved pricing, terms and conditions. If agreed, please indicate approval by electronically signing below.

All invoices should be sent to the Accounts Payable Department, City of Palm Coast, 160 Lake Avenue, Palm Coast, Florida 32164, or to [ap@palmcoastgov.com](mailto:ap@palmcoastgov.com). Likewise, legal notices should be sent to the attention of the City Manager at the same address.

If you should have any questions, please don't hesitate to contact me the email address below.

Sincerely,

DocuSigned by:  
*Rose Conceicao*  
9C4ED497E51242A...

Rose Conceicao  
Risk Management & Contract Coordinator  
[rconceicao@palmcoastgov.com](mailto:rconceicao@palmcoastgov.com)







### CONTRACT EXECUTIVE OVERVIEW (Non-Construction)

Vendor Name Miller Pipeline LLC  
Project Name: Wastewater Collection System  
Bid/Reference # RFP170241DL  
Contract Type: Piggyback

Contract Value \$ 250000.00

Resolution # \_\_\_\_\_

City Council Approval Date: \_\_\_\_\_

Standard Contract Template (Y/N): N/A - Piggyback

If No, then Reviewed by City Attorney: N/A - Piggyback

Length of Contract: 12/01/2020

If Yes, # and length of renewals: 3 - 1 year

Renewable (Y/N): Y

City's Project Manager Ralph Hand

**Brief Description/Purpose:**

To utilize the pricing on the Lee County contract with Miller Pipeline for the purchase of construction services related to Wastewater collection systems.

**Approvals:**

Responsible Dept. Director \_\_\_\_\_ Date: \_\_\_\_\_

City Finance \_\_\_\_\_ Date: \_\_\_\_\_

City Attorney \_\_\_\_\_ Date: \_\_\_\_\_

ASED Director \_\_\_\_\_ Date: \_\_\_\_\_

City Manager \_\_\_\_\_ Date: \_\_\_\_\_

of Procurement Management and is deemed incorporated into this Agreement.

## **II. TERM AND DELIVERY**

- A. This Agreement shall commence immediately upon execution by both the County and the Contractor, and shall continue for a period of two (2) years. The Agreement may be renewed for up to three (3) additional one (1) year periods upon mutual written agreement of the County and the Contractor.
- B. A Supplemental Task Authorization shall be issued by the County before commencement of any work or purchase of any goods related to this Agreement.
- C. Products and services shall be delivered in accordance with Supplemental Task Authorizations and Change Orders.

## **III. COMPENSATION AND PAYMENT**

- A. The County shall pay the Contractor in accordance with the terms and conditions of this Agreement, and any Supplemental Task Authorizations issued hereunder, for providing all products and services as set forth in Exhibit A, and further described in Exhibit B, Fee Schedule, attached hereto and incorporated herein. Said total amount to be all inclusive of costs necessary to provide all products and services as outlined in this Agreement, and as supported by the Contractor's submittal in response to the Solicitation, a copy of which is on file with the County's Department of Procurement Management and is deemed incorporated into this Agreement.
- B. Notwithstanding the preceding, Contractor shall not make any deliveries or perform any work under this Agreement until receipt of a Notice to Proceed from the County. Contractor acknowledges and agrees that no minimum order or amount of product or work is guaranteed under this Agreement and County may elect to issue no Supplemental Task Authorizations. If a Supplemental Task Authorization is issued, the County reserves the right to amend, reduce, or cancel the work authorization in its sole discretion.
- C. All funds for payment by the County under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of nonappropriation of funds by the County for the services provided under this Agreement, the County will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by the Contractor on fifteen (15) days' prior written notice, but failure to give such notice will be

**VIII. PERFORMANCE AND PAYMENT BOND(S)**

- A. The Contractor shall procure performance and payment bond(s) in accordance with Exhibit D.

**IX. RESPONSIBILITIES OF THE CONTRACTOR**

- A. The Contractor shall be responsible for the quality and functionality of all products supplied and services performed by or at the behest of the Contractor under this Agreement. The Contractor shall, without additional compensation, correct any errors or deficiencies in its products, or if directed by County, supply a comparable replacement product or service.
- B. The Contractor warrants that it has not employed or retained any company or person (other than a bona fide employee working solely for the Contractor), to solicit or secure this Agreement and that it has not paid or agreed to pay any person, company, corporation, individual, or firm other than a bona fide employee working solely for the Contractor, any fee, commission, percentage, gift, or any other consideration, contingent upon or resulting from the award of this Agreement.
- C. The Contractor shall comply with all federal, state, and local laws, regulations and ordinances applicable to the work or payment for work thereof, and shall not discriminate on the grounds of race, color, religion, sex, or national origin in the performance of work under this Agreement.
- D. Contractor specifically acknowledges its obligations to comply with §119.0701, F.S., as amended from time to time, with regard to public records, and shall:
  - 1) keep and maintain public records that ordinarily and necessarily would be required by the County in order to perform the services required under this Agreement;
  - 2) upon request from the County's custodian of public records, provide the County with a copy 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 in Chapter 119 Florida Statutes or as otherwise provided by law;
  - 3) ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed, except as authorized by law; and
  - 4) meet all requirements for retaining public records and transfer, at no cost to the County, all public records in possession of Contractor upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public

**XII. COMPLIANCE WITH APPLICABLE LAW**

This Agreement will be governed by the laws of the State of Florida. Contractor shall promptly comply with all applicable federal, state, county and municipal laws, ordinances, regulations, and rules relating to the services to be performed hereunder and in effect at the time of performance. Contractor shall conduct no activity or provide any service that is unlawful or offensive.

**XIII. TERMINATION**

- A. The County shall have the right at any time upon fifteen (15) days' written notice to the Contractor to terminate this Agreement in whole or in part for any reason whatsoever. In the event of such termination, the County will be responsible to Contractor only for fees and compensation earned by the Contractor, in accordance with Section III, prior to the effective date of said termination. In no event shall the County be responsible for lost profits of Contractor or any other elements of breach of contract.
- B. After receipt of a notice of termination, except as otherwise directed, the Contractor shall stop work on the date of receipt of the notice of termination or other date specified in the notice; place no further orders or subcontracts for materials, services, or facilities except as necessary for completion of such portion of the work not terminated; terminate all Contractors and subcontracts; and settle all outstanding liabilities and claims.
- C. The County's rights under this Agreement shall survive the termination or expiration of this Agreement and are not waived by final payment or acceptance and are in addition to the Contractor's obligations under this Agreement.

**XIV. DISPUTE RESOLUTION**

- A. In the event of a dispute or claim arising out of this Agreement, the parties agree first to try in good faith to settle the dispute by direct discussion. If this is unsuccessful, the parties may enter into mediation in Lee County, Florida, with the parties sharing equally in the cost of such mediation.
- B. In the event mediation, if attempted, is unsuccessful in resolving a dispute, the parties may proceed to litigation as set forth below.
- C. Any dispute, action or proceeding arising out of or related to this Agreement will be exclusively commenced in the state courts of Lee County, Florida, or where proper subject matter jurisdiction exists in the United States District Court for the Middle District of Florida. Each party irrevocably submits and

expense to the County. The County reserves the right to reject any or all materials if, in its judgment, the item reflects unsatisfactory workmanship or manufacturing or shipping damage. In such case, the Contractor shall refund to the County any money which has been paid for same.

- C. Contractor shall secure from the applicable third party manufacturers, and assign and pass through to the County, at no additional cost to the County, such warranties as may be available with respect to the equipment, parts and systems provided through the Purchase.

## **XVII. MISCELLANEOUS**

- A. This Agreement constitutes the sole and complete understanding between the parties and supersedes all other contracts between them, whether oral or written, with respect to the subject matter. No amendment, change or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement.
- B. The Contractor shall not assign any interest in this Agreement and shall not transfer any interest in same (whether by assignment or novation) without the prior written consent of the County, except that claims for the money due or to become due to the Contractor from the County under this Agreement may be assigned to a financial institution or to a trustee in bankruptcy without such approval from the County. Notice of any such transfer or assignment due to bankruptcy shall be promptly given to the County.
- C. The exercise by either party of any rights or remedies provided herein shall not constitute a waiver of any other rights or remedies available under this Agreement or any applicable law.
- D. The failure of the County to enforce one or more of the provisions of the Agreement may not be construed to be and is not a waiver of any such provision or provisions or of its right thereafter to enforce each and every such provision.
- E. The parties covenant and agree that each is duly authorized to enter into and perform this Agreement and those executing this Agreement have all requisite power and authority to bind the parties.
- F. Neither the County's review, approval or acceptance of, nor payment for, the products and services required under this Agreement shall be construed to operate as a waiver of any rights under this Agreement or of any cause of action arising out of the performance of this Agreement.
- G. If the Contractor is comprised of more than one legal entity, each entity shall be jointly and severally liable hereunder.

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date last below written.

WITNESS:

Signed By: Emy L. Belich

Print Name: Emy L. Belich

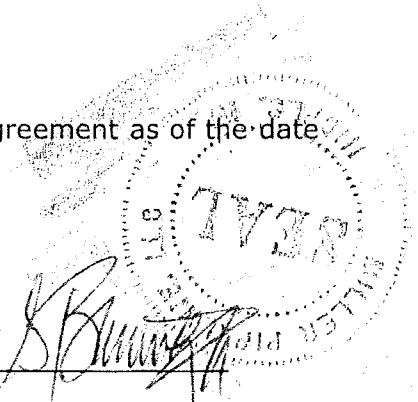
**Miller Pipeline, LLC**

Signed By: Douglas S. Banning, Jr.

Print Name: Douglas S. Banning, Jr.

Title: C.E.O.

Date: 12/1/17



**LEE COUNTY**

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

BY: Cecil L. Pendergrass  
CHAIR

DATE: 1-5-18

Commissioner Cecil L. Pendergrass  
Lee County Board of County Commissioners  
District 2

ATTEST:  
CLERK OF THE CIRCUIT COURT  
Linda Doggett, Clerk

BY: Shirley King  
**DEPUTY CLERK**



APPROVED AS TO FORM FOR THE  
RELIANCE OF LEE COUNTY ONLY:

BY: L.C. Lira  
OFFICE OF THE COUNTY ATTORNEY

## **EXHIBIT B FEE SCHEDULE**

Payment for actual work completed shall be made in accordance with the terms of this Agreement and any Supplemental Task Authorizations issued hereunder. All project pricing shall be determined by the rates established by the Contractor's Response to the Solicitation, attached hereto and incorporated herein as Attachment 1 to this Exhibit B. All quotes received by the County from the Contractor shall reflect pricing at or below the rates listed in this Exhibit B.

**EXHIBIT B – ATTACHMENT 1  
FEE SCHEDULE**

<b>ITEM NO.</b>	<b>DESCRIPTION</b>	<b>UNIT PRICE BID</b>
F1 ✕	Install Fold and Form liner, 8-inch diameter gravity mains (all depths)	<b>\$30.00</b>
F2 ✕	Install Fold and Form liner, 10-inch diameter gravity mains (all depths)	<b>\$32.00</b>
F3 ✕	Install Fold and Form liner, 12-inch diameter gravity mains (all depths)	<b>\$34.00</b>
F4 ✕	Install Fold and Form liner, 15-inch diameter gravity mains (all depths)	<b>\$57.00</b>
F5 ✕	Reinstate Laterals and Grout annular space	<b>\$475.00</b>
F6	Work in Rear-Yard Easement (items F1 & F4)	<b>\$605.00</b>
F7	Protruding service connection removed by internal means	<b>\$264.00</b>
F8	Sewer main cleaning and TV inspection (8-inch through 12-inch)	<b>\$2.00</b>
F9	Sewer main cleaning and TV inspection (15-inch through 21-inch)	<b>\$2.50</b>
F10	Sewer main cleaning and TV inspection (21-inch through 24-inch)	<b>\$2.75</b>
F11	Mechanical Root or Grease Removal (12-inch or smaller)	<b>\$3.75</b>
F12	Mechanical Tuberculation Removal (12-inch or smaller)	<b>\$16.50</b>
F13	Bypass Pumping (6-inch through 10-inch sewer)	<b>\$550.00</b>
F14	Bypass Pumping (12-inch and 15-inch sewer)	<b>\$3,850.00</b>



# City of Palm Coast, Florida Agenda Item

Agenda Date: 02/06/2018

<b>Department</b> UTILITY	<b>Amount</b> \$ 31,000.00
<b>Item Key</b>	<b>Account</b> # 54019084-052030
<b>Subject</b> RESOLUTION 2018-XX APPROVING PIGGYBACKING ST. JOHNS COUNTY CONTRACT WITH CHEMTRADE INC. FOR THE PURCHASE OF LIQUID ALUMINUM SULFATE	
<b>Background :</b>	
<p><b><u>Update for the February 6, 2018 Business Meeting</u></b>            This item was heard by City Council at their January 30, 2018 Workshop. There were no changes suggested to this item.</p> <p><b><u>Original Background from the January 30, 2018 Workshop</u></b>            The Wastewater Treatment Division uses liquid aluminum sulfate to control phosphorous limits to comply with (FDEP) Florida Department of Environmental Protection permit at Wastewater Treatment Plant #2.</p> <p>City staff is recommending that City Council approve piggybacking the St. Johns County Contract (#17-MCC-CHE-07813) with Chemtrade Inc. through February 1, 2019 to purchase liquid aluminum sulfate. Piggybacking existing competitively bid contracts is advantageous since the pricing is generally better than what the City could obtain on its own, and the City does not incur the expense and delay of soliciting a bid.</p> <p>Since the underlying contract is an agreement on a per unit price basis, City staff will make purchases on an as needed basis using budgeted funds appropriated by City Council. The Fiscal Year 2018 Budget includes available funding in the City's Utility operating budgets to purchase aluminum sulfate. City staff estimate that the City will expend approximately \$31,000 annually under this piggyback contract.</p>	
<b>Recommended Action :</b>	
Adopt Resolution 2018-XX approving piggybacking St. Johns County Contract with Chemtrade Inc. for the purchase of liquid aluminum sulfate.	

**RESOLUTION 2018 - \_\_\_\_\_**  
**PIGGYBACK ST. JOHNS COUNTY CONTRACT WITH**  
**CHEMTRADE INC. FOR LIQUID ALUMINUM SULFATE**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, AUTHORIZING A PIGGYBACK CONTRACT WITH CHEMTRADE INC. ON ST. JOHNS COUNTY CONTRACT #17-MCC-CHE-07813 FOR LIQUID ALUMINUM SULFATE; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE SAID CONTRACT; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS,** Chemtrade Inc. has expressed a desire to provide contractual services for Liquid Aluminum Sulfate to the City of Palm Coast; and

**WHEREAS,** the City Council of the City of Palm Coast desires to approve a piggyback contract with Chemtrade Inc. on St. Johns County Contract #17-MCC-CHE-07813 for Liquid Aluminum Sulfate.

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

**SECTION 1. APPROVAL OF PIGGYBACK.** The City Council of the City of Palm Coast hereby approves piggybacking a contract with Chemtrade Inc. on St. Johns County Contract #17-MCC-CHE-07813 for Liquid Aluminum Sulfate.

**SECTION 2. AUTHORIZATION TO EXECUTE.** The City Manager, or designee, is hereby authorized to execute the necessary documents.

**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 ADOPTED** by the City Council of the City of Palm Coast, Florida, on this 6th day, February 2018.

**CITY OF PALM COAST, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
MELISSA HOLLAND, MAYOR

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

Attachment: Engagement Letter

Approved as to form and legality

\_\_\_\_\_  
William E. Reischmann, Jr., Esq.  
City Attorney



# City of PALM COAST

Administrative Services & Economic Development  
Central Services Division

160 Lake Avenue  
Palm Coast, FL 32164  
386-986-3730

January 10, 2018

Parul Kachhia-Patel  
Marketing Specialist  
Chemtrade Chemicals US, LLC  
90 East Halsey Road  
Parsippany, NJ 07054

**RE: Engagement Letter Authorizing Piggyback  
Water & Wastewater Treatment Chemicals Bulk Aluminum Sulfate**

Contract Name

**Bid # 16-54 Contract # 17-MCC-CHE-07813**

Contract Reference

Dear Parul Kachhia-Patel,

The City of Palm Coast, Florida requests permission to utilize your company's above referenced contract in accordance with the approved pricing, terms and conditions. If agreed, please indicate approval by electronically signing below.

All invoices should be sent to the Accounts Payable Department, City of Palm Coast, 160 Lake Avenue, Palm Coast, Florida 32164, or to [ap@palmcoastgov.com](mailto:ap@palmcoastgov.com). Likewise, legal notices should be sent to the attention of the City Manager at the same address.

If you should have any questions, please don't hesitate to contact me the email address below.

Sincerely,

DocuSigned by:

*Rose Conceicao*

9C4ED497E51242A...

Rose Conceicao

Risk Management & Contract Coordinator  
[rconceicao@palmcoastgov.com](mailto:rconceicao@palmcoastgov.com)





**CONTRACT AGREEMENT**  
**Bid No: 16-54; Purchase of Water & Wastewater Treatment Chemicals**  
**Bulk Aluminum Sulfate**  
**Master Contract No: 17-MCC-CHE-07813**

This Contract Agreement ("Agreement") is made as of this 29<sup>th</sup> day of December, 2016, by and between St. Johns County, FL, ("County") or ("St. Johns County") a political subdivision of the State of Florida, with principle offices located at 500 San Sebastian View, St. Augustine, FL 32084, and Chemtrade Chemicals US, LLC, ("Contractor") authorized to do business in the State of Florida, with mailing address: 90 East Halsey Road, Parsippany, NJ 07054; Phone: (800) 858-7665; Fax: (832) 436-4709; and Email: bids@poolsure.com.

WITNESSETH: That for and in consideration of the payment and agreements hereinafter mentioned;

**ARTICLE 1 – DURATION AND RENEWAL**

This Agreement shall become effective on February 1, 2017, shall be in effect for an initial contract term of one (1) calendar year, and may be renewed for up to a maximum of four (4) one (1) year renewal periods, upon satisfactory performance by the Contractor, mutual agreement by both parties, and the availability of funds. While this Agreement may be renewed as stated in this Section, it is expressly noted that the County is under no obligation to extend this Agreement. It is further expressly understood that the option of extension is exercisable only by the County, and only upon the County's determination that the Contractor has satisfactorily performed the Scope of Services noted elsewhere in this Agreement.

**ARTICLE 2 – ENUMERATION OF CONTRACT DOCUMENTS**

The term "Contract Documents" shall consist of all Bid Documents and any addenda/exhibits thereto; all Specifications; this Agreement, any duly executed amendments, addenda, and/or exhibits hereto; and any and all duly executed Task Orders, and Change Orders, if applicable. Any representations, whether verbal or written, that are not included in the Contract Documents do not form part of this Contract Agreement.

**ARTICLE 3 – SERVICES**

The Contractor's responsibility under this Agreement shall be to provide all labor, materials, and equipment necessary to supply **bulk aluminum sulfate** to the St. Johns County Utility Department, ("SJCUD"), as needed, in accordance with Bid No: 16-54, and as otherwise provided in the Contract Documents.

**ARTICLE 4 – SCHEDULE**

The Contractor shall perform the required services as specified in the Contract Documents. The Contractor shall be required to comply with the schedule set forth in the specifications, and as coordinated with the authorized designee(s) in SJCUD, throughout the duration of this Agreement. No changes to said schedule shall be made without prior written authorization by the County.

**ARTICLE 5 – COMPENSATION/BILLING/INVOICES**

- A. St. Johns County shall compensate the Contractor based upon the unit price per pound of **point five two eight one cents (\$0.5281) per gallon for bulk aluminum sulfate**, as submitted in the bid proposal, accepted by the County, and provided herein. The maximum amount available as compensation to the Contractor under this Agreement shall not exceed the annual amount budgeted by SJCUD, unless additional funds become available, or are properly transferred, for services satisfactorily performed in accordance with the Contract Documents.
- B. It is strictly understood that the Contractor is not entitled to the above referenced amount of compensation. Rather, the Contractor's compensation shall be based upon the Contractor's adhering to the Scope of Services, detailed in the Contract Documents. As such, the Contractor's compensation is dependent upon satisfactory completion of services stated in the Specifications, and included by reference in this Agreement.

- C. The Contractor shall bill the County at the end of each month, for Services satisfactorily performed. The County reserves the right to pro-rate or refuse payment of any submitted invoice where services were not satisfactorily performed. The County shall pay the Contractor, for Services satisfactorily performed, in accordance with the Prompt Payment Act, Chapter 218.74(2), Florida Statutes.
- D. Though there is no billing form or format pre-approved by either the County, or the Contractor, bills/invoices submitted by the Contractor shall include the following information at a minimum:
  - Vendor Information (Full Legal Name, Address, Phone, Fax, Email)
  - Date of Invoice, Invoice Number
  - SJC Purchase Order Number, Master Contract Number, Bid Number
  - Unit Price of Product, Total Price of Invoice
  - Quantities Provided, Date(s) of Service, Location(s) Delivered To
- E. Final Invoice: In order for the County and the Contractor to reconcile/close their books and records, the Contractor shall clearly state "Final Invoice" on the Contractor's final/last billing to the County.
- F. Unless otherwise notified, bills/invoices shall be delivered to:  
St. Johns County Utility Department  
ATTN: Kathy Kelshaw  
1205 State Road 16  
St. Augustine, FL 32084

**ARTICLE 6 – TRUTH-IN-NEGOTIATING CERTIFICATE**

The signing of this Agreement by the Contractor shall act as the execution of a truth-in-negotiation certificate, certifying that the wage rates and cost used to determine the compensation provided for this Agreement are accurate, complete and current as of the date of this Agreement.

The said rates and costs shall be reduced to exclude any significant sums should the county determine that the rates and costs were increased due to inaccurate, incomplete or non-current wage rate, or due to inaccurate representations of fees paid to outside subcontractors. The County may exercise its rights under this Article 6 within eighteen (18) months following final payment.

**ARTICLE 7 – TERMINATION**

- A. This Agreement may be terminated by the County without cause upon at least thirty (30) consecutive calendar days advance written notice to the Contractor of such termination without cause.
- B. This Contract may be terminated by the County with cause upon at least fourteen (14) consecutive calendar days advance written notice of such termination with cause. Such written notice shall indicate the exact cause for termination.

**ARTICLE 8 – NOTICE OF DEFAULT/RIGHT TO CURE**

- A. Should the Contractor fail to perform (default) under the terms of this Agreement, then the County shall provide written notice to the Contractor; such notice shall include a timeframe of no fewer than five (5) consecutive calendar days in which to cure the default. Failure by the Contractor to cure the default, or take acceptable corrective action within the timeframe provided in the Notice of Default (or any such amount of time as mutually agreed to by the parties in writing), shall constitute cause for termination of this Agreement.
- B. It is expressly noted that, should the County issue three (3) Notices of Default to the Contractor, during the term of this Agreement, such action shall constitute cause for termination of this Agreement.
- C. Consistent with other provisions in this Contract, the Contractor shall be paid for deliveries authorized and satisfactorily performed under this Agreement until the effective date of the termination.
- D. Upon receipt of a Notice of Default, except as otherwise directed by the County in writing, the Contractor shall:
  - 1. Stop work on the date to the extent specified.
  - 2. Terminate and settle all orders and subcontracts relating to this Agreement.

shall specifically include the County as Additional Insured for all lines of coverages except Workers' Compensation and Professional Liability. A copy of the endorsement must accompany the certificate. Compliance with the foregoing requirements shall not relieve the Contractor of its liability and obligations under this Agreement.

Certificate Holder Address: St. Johns County, a political subdivision of the State of Florida  
500 San Sebastian View  
St. Augustine, FL 32084

The Contractor shall maintain during the life of this Agreement, Comprehensive General Liability Insurance with minimum limits of \$1,000,000 per occurrence, \$2,000,000 aggregate, to protect the Contractor from claims of damages for bodily injury, including wrongful death, as well as from claims of property damages which may arise from any operations under this Agreement, whether such operations be by the Contractor or by anyone directly employed by or contracting with the Contractor.

The Contractor shall maintain during the life of this Agreement, Comprehensive Automobile Liability Insurance with minimum limits of \$300,000 combined single limit for bodily injury and property damage liability to protect the Contractor from claims for damages for bodily injury, including the ownership, use, or maintenance of owned and non-owned automobiles, including rented/hired automobiles whether such operations be by the Contractor or by anyone directly or indirectly employed by the Contractor.

The Contractor shall maintain during the life of this Agreement, adequate Workers' Compensation Insurance in at least such amounts as is required by the law for all of its employees per Florida Statute 440.02.

In the event of unusual circumstances, the County Administrator or his designee may adjust these insurance requirements.

#### **ARTICLE 14 – INDEMNIFICATION**

The Contractor shall indemnify and hold harmless the County, its officers, and employees, from all liabilities, damages, losses, and costs arising under this Agreement, including, but not limited to, reasonable attorneys' fees, to the extent caused by the negligence, recklessness, act, or omission of the Contractor or any other person employed or utilized by the Contractor, whether intentional or unintentional.

#### **ARTICLE 15 – SUCCESSORS & ASSIGNS**

The County and the Contractor each binds itself and its partners, successors, executors, administrators and assigns to the other party of this Contract Agreement and to the partners, successors, executors, administrators and assigns of such other party, in respect to all covenants of this Agreement. Except as above, neither the County nor the Contractor shall assign, sublet, convey or transfer its interest in this Agreement without the written consent of the other. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of the County, which may be a party hereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the County and the Contractor.

#### **ARTICLE 16 – REMEDIES**

No remedy herein conferred upon any party is intended to be exclusive, or any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or nor hereafter existing at law or in equity or by statute or otherwise. No single or partial exercise by any party or any right, power, or remedy hereunder shall preclude any other or further exercise thereof.

In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitle to recover reasonable attorneys' fees.

#### **ARTICLE 17 – CONFLICT OF INTEREST**

The Contractor represents that it presently has no interest and shall acquire no interest, either directly or indirectly, which would conflict in any manner with the performance of the obligations required hereunder. The Contractor further represents that no person having any interest shall be employed for said performance.

**ARTICLE 23 – NONDISCRIMINATION**

The Contractor warrants and represents that all of its employees are treated equally during employment without regard to race, color, religion, physical handicap, sex, age, or national origin.

**ARTICLE 24 – ENTIRETY OF CONTRACTUAL AGREEMENT**

The County and the Contractor agree that this Agreement, signed by both parties sets forth the entire agreement between the parties, and that there are no promises or understandings other than those stated herein, or are incorporated by reference into this Agreement. None of the provisions, terms, conditions, requirements, or responsibilities noted in this Agreement may be amended, revised, deleted, altered, or otherwise changed, modified, or superseded, except by written instrument, duly executed by authorized representatives of both the County, and the Contractor.

**ARTICLE 25 – ENFORCEMENT COSTS**

If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any provisions of this Agreement, the successful or prevailing party or parties shall be entitled to recover reasonable attorneys' fees, court costs and expenses incident to appeals, incurred in that action or proceedings, in addition to any other relief to which such party or parties may be entitled.

**ARTICLE 26 – AUTHORITY TO PRACTICE**

The Contractor hereby represents and warrants that it has and shall continue to maintain all license and approvals required to conduct its business, and that it shall at all times, conduct its business activities in a reputable manner.

**ARTICLE 27 – SEVERABILITY**

If any term or provision of this Agreement, or the application thereof to any person or circumstances shall, to any extent, be held invalid or unenforceable, the remainder of this Agreement, or the application of such items or provision, to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected and every other term and provision of this Agreement shall be deemed valid and enforceable to the extent permitted by law.

**ARTICLE 28 – AMENDMENTS & MODIFICATIONS**

No amendments or modifications of this Agreement shall be valid unless in writing and signed by each of the parties.

St. Johns County reserves the right to make changes in the work, including alterations, reductions therein or additions thereto. Upon Contractor's receipt of notification from the County of a contemplated change, the Contractor shall: (1) if requested by the County, provide an estimate for the increase or decrease in cost due to the contemplated change; (2) notify the County of any estimated change in the completion date; and (3) advise the County in writing if the contemplated change shall effect the Contractor's ability to meet the completion dates or schedules of this Agreement. If the County instructs in writing, the Contractor shall suspend work on that portion of the project, pending the County's decision to proceed with the change. If the County elects to make the change, the County shall issue a Change Order for changes, or a contract change order, if the original contract is to be changed or amended the Contractor shall not commence work on any such change until such written change order has been issued and signed by each of the parties.

**ARTICLE 29 – FLORIDA LAW AND VENUE**

This Agreement shall be governed by the laws of the State of Florida. Any and all legal action necessary to enforce this Agreement shall be held in St. Johns County, FL.

**ARTICLE 30 – ARBITRATION**

The County shall not be obligated to arbitrate or permit any arbitration binding on the County under any of the Contract Documents or in connection with the project in any manner whatsoever.



termination of this Agreement by the County.

**IF THE CONTRACTOR HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO ITS DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT: OCA, ATTN: Public Records Manager, 500 San Sebastian View, St. Augustine, FL 32084, PH: (904) 209-0805, EMAIL: [publicrecords@sjcfl.us](mailto:publicrecords@sjcfl.us).**

**ARTICLE 34 – NO THIRD PARTY BENEFICIARIES**

Both the County and the Contractor explicitly agree, and this Agreement explicitly states that no third party beneficiary status or interest is conferred to, or inferred to, any other person or entity.

**ARTICLE 35 – USE OF COUNTY LOGO**

Pursuant to, and consist with, County Ordinance 92-2 and County Administrative Policy 101.3, the Contractor may not manufacture, use, display, or otherwise use any facsimile or reproduction of the County Seal/Logo without express written approval of the Board of County Commissioners of St. Johns County, FL.

**ARTICLE 36 – SURVIVAL**

It is explicitly noted that the following provisions of this Agreement, to the extent necessary, shall survive any suspension, termination, cancellation, revocation, and/or non-renewal of this Agreement, and therefore shall be both applicable and enforceable beyond any suspension, termination, cancellations, revocation, and/or non-renewal: (1) Truth-in-Negotiation; (2) Federal and State Taxes; (3) Insurance; (4) Indemnification; (5) Access and Audits; (6) Enforcement Costs; and (7) Public Records.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be executed by their duly authorized officials, this Agreement, three (3) copies of which shall be deemed an original on the date first above written.

**ST. JOHNS COUNTY, FL:**

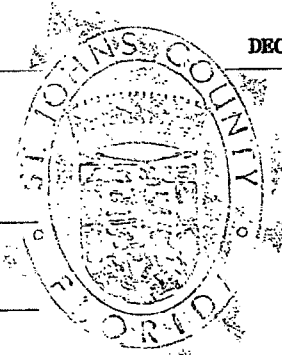
*Jaimie Hochleas*  
County Representative Signature  
12/29/16  
Date

**ATTEST: ST. JOHNS COUNTY, FL  
CLERK OF COURT**  
*Pam Halten*  
Deputy Clerk

12/29/16  
Date of Execution

**LEGALLY SUFFICIENT:**

*[Signature]*  
Sr. Asst. County Attorney  
11/28/16  
Date of Execution



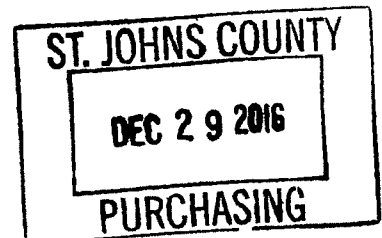
**CONTRACTOR:**

Chemtrade Chemicals US, LLC  
Company Name

ELIZABETH RYNO  
Name (Type or Print)  
*Elizabeth Ryno*  
Signature

MARKETING SPECIALIST  
Title

DECEMBER 28, 2016  
Date of Execution



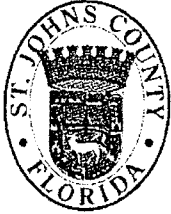
**BID NO: 16-54; PURCHASE OF WATER & WASTEWATER TREATMENT CHEMICALS  
BULK ALUMINUM SULFATE**

**EXHIBIT "B"  
CONTRACT SCHEDULE**

The Contract Period for the required services shall be as follows:

***Initial Contract Term:*** Shall become effective on February 1, 2017, and shall remain in effect for a period of one (1) calendar year, or until funds may become exhausted.

***Contract Renewal/s:*** This Agreement may be renewed for up to four (4), one (1) year renewal periods upon satisfactory performance by the Contractor, mutual agreement by all parties, availability of funds and the continued need of the County for the required services.



## St. Johns County Board of County Commissioners

Purchasing Division

November 20, 2017

Mr. Parul Kachhia-Patel  
Chemtrade Chemicals US, LLC  
90 East Halsey Road  
Parsippany, NJ 07054

RE: Bid No: 16-54 – Purchase of Water & Wastewater Treatment Chemicals  
Master Contract No. 17-MCC-CHE-07813

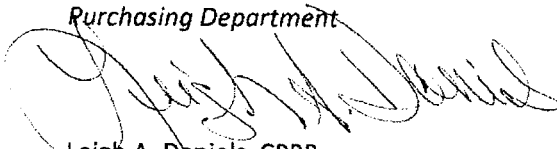
Dear Mr. Patel:

Enclosed, please find a fully executed original copy of the above referenced contract amendment #1 for your files.

Should you have any questions, please call me at 904-209-0154.

Thank you for doing business with St. Johns County.

Sincerely,  
St. Johns County, FL  
Purchasing Department



Leigh A. Daniels, CPPB  
Senior Buyer  
(904) 209-0154 – Direct  
(904) 209-0155 – Fax  
[ldaniels@sjcfl.us](mailto:ldaniels@sjcfl.us)

CC: SJC Minutes & Records  
SJC Purchasing Bid No: 16-54 Master File



90 East Halsey Road  
Parsippany, NJ 07054  
Phone: 1-800-441-2659  
Fax: 973-515-4461

January 9, 2018

Pat Henderson  
City of Palm Coast  
160 Lake Avenue  
Palm Coast, FL 32164

**SUBJECT: LIQUID ALUMINUM SULFATE (Bid #16-54)  
Contract #17-MCC-CHE-07813**

As per your conversation with Paul Peters our Business Manager, Chemtrade Chemicals US LLC is pleased to respond to your request for Liquid Aluminum Sulfate and to piggyback off of St. Johns County bid. We offer the following pricing for your consideration:

**LIQUID ALUMINUM SULFATE**  
*In Tank Trucks*  
*\$205.60/Dry Ton*

*Price equates to \$0.5551 per gallon invoiced to St. Johns.*

*F.O.B destination.*

The above price is firm for the period of February 1, 2018 through January 31, 2019.

All other terms and conditions of the original bid will remain the same.

If this is acceptable to you, please sign below and fax or email back to 973-515-4461 bids@chemtradelogistics.com or send us your necessary paperwork.

Thank you for the business and we look forward to supplying your Liquid Aluminum Sulfate requirements.

Best regards,

Parul Kachhia-Patel  
Marketing Specialist

**ACCEPTED: City of Palm Coast, FL**

**BY:** \_\_\_\_\_

**TITLE:** \_\_\_\_\_

**Date:** \_\_\_\_\_

# City of Palm Coast, Florida

## Agenda Item

Agenda Date : 02/06/2018

<b>Department</b>	CENTRAL SERVICES	<b>Amount</b>	UNIFORMS \$76,000.00 FIRE PROTECTION \$36,000.00
<b>Item Key</b>		<b>Account</b>	MULTIPLE
<b>Subject</b>	RESOLUTION 2018-XX APPROVING PIGGYBACKING THE US COMMUNITIES CONTRACT WITH CINTAS CORPORATION TO PURCHASE UNIFORM RENTAL SERVICES AND FIRE PROTECTION SERVICES		
<b>Background :</b>			
<b><u>Update for the February 6, 2018 Business Meeting</u></b>			
This item was heard by City Council at their January 30, 2018 Workshop. There were no changes suggested to this item.			
<b><u>Original Background from the January 30, 2018 Workshop</u></b>			
<p>The current contract for uniform rental services is set to expire this year. Based on feedback from City employees, the City does not desire to continue contracting with the current vendor because of various quality and service issues. Based on this information, Central Services Division staff with representatives from affected departments, researched various uniform rental companies and determined what options were available. In researching the various vendors, City staff determined that Cintas Corporation would be a good fit for the City's uniform rental services. Cintas's uniform rental options, superior customer service, and utilizing the pricing on the U.S. Communities Contract met all of our criteria. Through the U.S. Communities Contract, Cintas also provides fire protection services. Currently, the city utilizes multiple vendors to provide fire protection services (inspections, testing, etc.). Utilizing the U.S. Communities contract allows the City to use one vendor for all of our fire protection needs and services, which provides lower pricing, consistent service, and better vendor support.</p> <p>City staff is recommending that City Council approve piggybacking the U.S. Communities Contract (12-JLH-011) with Cintas Corporation through March 31, 2019 for uniform rentals and fire protection services. Piggybacking existing competitively bid contracts is advantageous since the pricing is generally better than what the City could obtain on its own, and the City does not incur the expense and delay of soliciting a bid.</p> <p>Since the underlying contract is a price agreement, City staff is using budgeted funds appropriated by City Council. The Fiscal Year 2018 Budget includes available funding in the City's various department budgets to purchase uniform rental services and fire protection services. City staff estimate that the City will expend approximately \$76,000.00 on uniform rentals and \$36,000.00 on fire protection services annually under this piggyback contract.</p>			
<b>Recommended Action :</b>			
Adopt Resolution 2018-XX approving piggybacking the U.S. Communities Contract with Cintas Corporation to purchase uniform rental services and fire protection services.			

**RESOLUTION 2018-\_\_\_\_**  
**CINTAS CORPORATION**  
**UNIFORM RENTAL SERVICES AND FIRE PROTECTION SERVICES**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING PIGGYBACKING THE U.S. COMMUNITIES CONTRACT WITH CINTAS CORPORATION TO PURCHASE UNIFORM RENTAL SERVICES AND FIRE PROTECTION SERVICES; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE THE NECESSARY DOCUMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the City of Palm Coast desires to purchase uniform rental services and fire protection services for various department city wide; and

**WHEREAS**, Cintas Corporation desires to sell the aforementioned uniform rental services and fire protection services to the City of Palm Coast.

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

**SECTION 1. APPROVAL OF PIGGYBACK CONTRACT.** The City Council of the City of Palm Coast hereby approves the terms and conditions of the piggyback contract with Cintas Corporation., 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 necessary documents.

**SECTION 3. SEVERABILITY.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Resolution are severable, and if any phrase, clause, sentence, paragraph or section of this Resolution shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections 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 ADOPTED** by the City Council of the City of Palm Coast, Florida, on this 6<sup>th</sup> day of February 2018.

**CITY OF PALM COAST, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
MILISSA HOLLAND, MAYOR

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

Attachment: Exhibit A-Piggyback Contract with Medora Corporation

Approved as to form and legality

\_\_\_\_\_  
William E. Reischmann, Jr., Esq.  
City Attorney

**US COMMUNITIES PRICING  
AMENDMENT #6  
4.1.2017**

Lease Rental Item	Item Description	Item #	Pricing Per Week (no cleaning)	Pricing Per Week (w/cleaning)	Lost - Replacement Charge (EA)
Men's Long Sleeve Shirt	Blend	935	\$ 0.140	\$ 0.186	\$ 15.545
Men's Short Sleeve Shirt	Blend	935	\$ 0.140	\$ 0.186	\$ 15.545
Men's Long Sleeve Shirt	100% Cotton	330	\$ 0.186	\$ 0.249	\$ 17.617
Men's Short Sleeve Shirt	100% Cotton	330	\$ 0.186	\$ 0.249	\$ 17.617
Oxford	100% Cotton	374	\$ 0.194	\$ 0.259	\$ 21.763
Oxford	100% Cotton	374	\$ 0.194	\$ 0.259	\$ 21.763
Men's Polo Shirt	Blend	259/262	\$ 0.206	\$ 0.276	\$ 20.467
Men's Pants	Blend	945	\$ 0.160	\$ 0.213	\$ 18.394
Men's Pants	100% Cotton	340	\$ 0.262	\$ 0.350	\$ 24.612
Men's Pants-Jeans	100% Cotton	394	\$ 0.226	\$ 0.301	\$ 20.209
Men's Cargo Pants		270	\$ 0.249	\$ 0.332	\$ 27.463
Women's Long Sleeve Shirt	Blend	205	\$ 0.132	\$ 0.176	\$ 16.996
Women's Short Sleeve Shirt	Blend	205	\$ 0.132	\$ 0.176	\$ 16.996
(Oxford)		86528	\$ 0.179	\$ 0.238	\$ 22.074
(Oxford)		86528	\$ 0.179	\$ 0.238	\$ 22.074
Women's Polo Shirt		298	\$ 0.206	\$ 0.276	\$ 21.763
Women's Pants	Blend	395/390	\$ 0.210	\$ 0.280	\$ 21.763
Women's Pants-Jeans	100% Cotton	394	\$ 0.226	\$ 0.301	\$ 27.591
Chef Coats		82670	\$ 0.179	\$ 0.238	\$ 23.576
Chef Pants		71125	\$ 0.249	\$ 0.332	\$ 26.944
*Aprons		67627	\$ 0.102	\$ 0.147	\$ 13.211
T-Shirt		268	\$ 0.147	\$ 0.197	\$ 16.064
Jacket	Lightweight	677	\$ 0.333	\$ 0.443	\$ 32.126
Jacket	Heavyweight	970	\$ 0.318	\$ 0.425	\$ 30.572
Coveralls	Blend	912	\$ 0.233	\$ 0.311	\$ 30.572
Coveralls	100% Cotton	910	\$ 0.318	\$ 0.425	\$ 41.972
Coveralls	Insulated	914	\$ 0.583	\$ 0.777	\$ 75.641
Coveralls	Fire Retardant	82302	\$ 0.598	\$ 0.798	\$ 81.870
Fire Retardant Shirts		60894	\$ 0.295	\$ 0.394	\$ 43.526
Fire Retardant Pants		70644	\$ 0.295	\$ 0.394	\$ 40.417
Lab Coats	Blend	925	\$ 0.186	\$ 0.249	\$ 30.572
Smocks	Blend	833	\$ 0.124	\$ 0.166	\$ 13.472
Emblem			Cost	Cost	-
30 days service			\$ 1.555	\$ 1.555	-
Name Tag			\$ 1.555	\$ 1.555	
Size Premium	Price Per Garment		\$ 0.156	\$ 0.156	
Lockers			\$ 3.628	\$ 3.628	

\* this item is for direct purchase only



SECTION B				
Item	Description	Item #	Rental Pricing Per Week	Lost - Replacement Charge (EA)
Cotton Towels	Shop	2160	\$ 0.062	\$ 0.467
Microfiber Towels		7432	\$ 0.156	\$ 1.348
3x5 Carpet Mat	Carpet	843XX	\$ 2.073	\$ 46.635
4x6 Carpet Mat	Carpet	844XX	\$ 2.560	\$ 72.543
3x10 Carpet Mat	Carpet	840XX	\$ 3.047	\$ 93.269
3x5 Scraper Mat	Scraper	2477	\$ 2.218	\$ 46.635
2x3 Spring Step		1801	\$ 1.575	\$ 51.816
3x5 Duralite Mat		1810	\$ 2.412	\$ 51.816
3x5 Logo Mat		84301	\$ 2.404	\$ 82.906
24" Dust Mop		2570	\$ 0.829	\$ 10.363
24" Dust Mop Frame		1948	\$ -	\$ 8.291
38" Dust Mop		2590	\$ 0.984	\$ 10.363
38" Dust Mop Frame		1947	\$ -	\$ 10.363
48" Dust Mop		2604	\$ 1.296	\$ 10.363
48" Dust Mop Frame		1948	\$ -	\$ 12.436
Wet Mop		2650	\$ 1.430	\$ 10.363
11" Microfiber Mop		6998	\$ 0.280	\$ 12.436
11" Microfiber Mop Handle		6999	\$ -	\$ 5.182
20" Microfiber Mop		7000	\$ 0.467	\$ 7.254
20" Microfiber Mop Handle		7002	\$ -	\$ 10.363
Automotive Parts Washer			\$ 30.500	\$ -

SECTION C			
Item	Description	Pricing Cost \$	Pricing Detail
Deep Restroom Cleaning	floors & fixtures	\$ 0.186 sq/ft	Minimum Charge \$31.090
Clean	Truck Mounted System	\$ 0.134 sq/ft	Minimum Charge \$414.529
Clean	2 Step Maintaining Clean	\$ 0.114 sq/ft	Minimum Charge \$414.529
Ceramic Tile Cleaning	Truck Mounted System	\$0.673 sq/ft	Minimum Charge \$414.529
Floor Cleaner	Concentrated Cleaning Chemicals	\$1.295 per unit	Pricing is based on units of Concentrated Chemicals delivered. Monthly Dispenser fee \$3.109. One time installation fee \$51.816
Glass Cleaner	Concentrated Cleaning Chemicals	\$1.865 per unit	Pricing is based on units of Concentrated Chemicals delivered. Monthly Dispenser fee \$3.109. One time installation fee \$51.816
Multi-Purpose Cleaner	Concentrated Cleaning Chemicals	\$2.850 per unit	Pricing is based on units of Concentrated Chemicals delivered. Monthly Dispenser fee \$3.109. One time installation fee \$51.816

SECTION D			
Item	Description	Item #	Purchase Price
Work Boots	Steel Toe	83815	\$ 124.99
Work Boots	Non Steel Toe	83719	\$ 119.99
Hard Hats		220	\$ 9.99
Protective Eye-Wear		22	\$ 1.31
Comfort Hat	Wool	131	\$ 5.99
Baseball Cap		85369	\$ 11.49
Belts	Black/Brown	122	\$ 16.99
Gloves	Leather	86939	\$ 25.00

**Additional Contract Language for Sections A-D:**

**Prices:** Customer agrees to rent from Company, and Company agrees to provide to Customer, the Merchandise, Inventory and services described on Section A, B & C, "Merchandise & Pricing" at the prices set forth in Section A, B & C. There will be a minimum charge of thirty-five dollars (\$35.00) per week for each Customer location required to purchase its rental services from Company as set forth in Agreement.

**Buyback of Non-Standard Garments:** Customer has ordered from Company a garment rental service requiring embroidered garments that may not be standard to Company's normal rental product line. Those non-standard products will be designated as such under Garment Description in Section A & B. In the event Customer deletes a non-standard product, alters the design of the non-standard product, fails to renew the Agreement, or terminates the Agreement for any reason other than documented quality of service reasons which are not cured, Customer agrees to buy back all remaining non-standard products allocated to Customer that the Company has in service and out of service at the then current Loss/Damage Replacement Values.

**Garments' Lack of Flame Retardant or Acid Resistant Features:** Unless specified otherwise in writing by the Company, the garments supplied under this Agreement are not flame retardant or acid resistant and contain no special flame retardant or acid resistant features. They are not designed for use in areas of flammability risk or where contact with hazardous materials is possible. Flame resistant and acid resistant garments are available from Company upon request. Customer warrants that none of the employees for whom garments are supplied pursuant to this Agreement require flame retardant or acid resistant clothing.

**Logo Mats:** In the event that Customer decides to delete any mat bearing the Customer's logo (Logo Mat) from the rental program, changes the design of the Logo Mats, terminates this agreement for any reason or fails to renew this Agreement, the Customer will purchase at the time of deletion, design change or termination, all remaining Logo mats that the Company has in service and out of service held in inventory at the then current Loss/Damage Replacement Value.

**Adding Employees:** Additional employees and Merchandise may be added to this Agreement at any time upon written or oral request by the Customer to the Company. Any such additional employees or Merchandise shall automatically become a part of and subject to the terms of this Agreement. If such employees are employed at a Customer location that is then participating under this Agreement, the Customer shall pay Company the one-time preparation fee indicated on Section A.

Customer shall not pay Company any one-time preparation fee of \$1.50 for garments for employees included in the initial installation of a Customer location. There will be a one-time charge for name and/or company emblems when employees are added to the program in garments requiring emblems.

**Emblem Guarantee:** Customer has requested that Company supply emblems designed exclusively for Customer featuring Customer's logo or other specific identification (hereinafter "Customer Emblems"). Company will maintain a sufficient quantity of Customer Emblems in inventory to provide for Customer's needs and maintain a low cost per emblem through quantity purchases.

In the event Customer decides to discontinue the use of Customer Emblems, changes the design of the Customer Emblems, terminates this Agreement for any reason or fails to renew this Agreement, the Customer will purchase at the time of deletion, design change, termination or expiration, all remaining Customer Emblems that the Company allocated to Customer at the price indicated on Section A & B of this Agreement. In no event shall the number of Customer Emblems allocated to Customer exceed the greater of (a) three (3) months' volume for each unique Customer Emblem or (b) a quantity agreed to by Company and Customer and noted on Section A & B.

**Terminating Employees:** Subject to the provisions of this Agreement, the weekly rental charge attributable to any individual leaving the employ of the Customer, or on a temporary leave of absence of the three (3) weeks or more, shall be terminated upon oral or written notice by the customer to the Company but only after all garments issued to that individual, or value of same at the then current Loss/Damage Replacement Values, are returned to Company.

**Replacement:** In the event any Merchandise is lost, stolen or is not returned to Company, or is destroyed or damaged by fire, welding damage, acid, paint, ink, chemicals, neglect or otherwise, the Customer agrees to pay for said Merchandise at the then current Loss/Damage Replacement Values.

<b>Additional Offerings included in Contract</b>		
Cintas Direct Sale Catalog	Entire Catalog	List Price less 10%
Facilities Source Book	Entire Catalog	List Price

### Dry Chemical Extinguishers and Emergency Lights

Item	Description	Quantity	Price	Comment
<b>Annual Maintenance and Service Charge:</b>				
SC	Service Charge	ea	\$45.765	Per Stop
IN	Portable Extinguisher Annual Maintenance Inspection	ea	\$5.339	Hand Portable Stored Pressure and CO2 Fire Extinguishers - up to 20#
INPTT	Push to test only	ea	\$4.424	
INEL	Emergency Exit Light Inspection	ea	\$12.204	Parts not included
INEX	Emergency Exit Light Inspection (AC)	ea	\$18.306	Parts not included; fixture with no battery
<b>Internal Maintenance and Test:</b>				
NADC5	5# Stored pressure Dry Chemical	ea	\$33.561	Includes O-Ring, V-Stem and Service Collar; 5# Year Internal Maintenance or Hydrostatic Test labor included as applicable; Plus Parts not specifically listed and applicable Inspection (IN) Price
NADC10	10# Stored pressure Dry Chemical	ea	\$35.595	
NADC20	20# Stored pressure Dry Chemical	ea	\$37.629	
<b>Dry Chemical Extinguisher Recharge</b>				
NRDC5	5# Stored pressure Dry Chemical	ea	\$31.527	Includes 5# Labor only, Agent and Service Collar; Plus Parts not specifically listed and applicable Inspection (IN) Price
NRDC10	10# Stored pressure Dry Chemical	ea	\$43.731	
NRDC20	20# Stored pressure Dry Chemical	ea	\$69.156	
<b>New Equipment:</b>				
Various	5# ABC Dry Chemical Fire Extinguisher	ea	\$60.003	
Various	10# ABC Dry Chemical Fire Extinguisher	ea	\$84.411	

### Kitchen Systems

INKS	Kitchen System Inspection - single tank	ea	\$106.785	
INKST	Kitchen System Inspection - remote tank	ea	\$86.445	
EELINK	Fusible Link	ea	\$9.967	

### Sprinkler

INSPW	Annual Sprinkler Inspection Wet - Initial Riser	ea	\$269.505	
INSPR	Annual Sprinkler Inspection Wet - Additional Riser	ea	\$106.785	
INSPWQ	Quarterly Sprinkler Inspection - Per Riser	ea	\$106.785	
INSPBF	Fire line backflow test per valve	ea	\$188.145	
INSPD	Sprinkler Inspection (Dry)	ea	\$279.675	
INSPAFI	Anti-Freeze loops Inspection & Test	ea	\$188.145	

### Alarm

INFA	Annual Fire Alarm System Inspection		\$238.995	
INFAID	Additional Devices Per Device (smoke det. bell, horn, strobe, pull station)		\$8.645	

### Back Flow

INSPBF	Inspection Back Flow - Domestic or Irrigation (per valve)	ea	\$117.97	Plus Permit at cost
--------	---	----	----------	---------------------

### Hourly Labor Rates - Emergency Calls, Repairs -All Services

LABOR - R	Labor Regular Hours, per hour	ea	\$106.785	
LABOR - O	Labor Overtime Hours, per hour	ea	\$160.178	
LABOR - W	Labor Weekend/Holiday Hours, per hour	ea	\$213.570	
ESC	Emergency Call - Minimum, plus LABOR Charge	ea	\$279.675	

### Additional Contract Language for Fire:

**Price Adjustments:** Company may adjust prices if Customer requests significant changes to the product fill list, service requirements, sales requirements, billing requirements, or report generation. Should Company experience any extraordinary cost increases that necessitate price changes during this contract, Company will present Customer with the proposed new prices and explanation. Should Customer deny these changes, Company may choose to exclude those affected items from the program or terminate the Agreement.

**Description of Services:** Company shall provide Customer with service and maintenance of Portable Fire Extinguishers (Exhibit A), Emergency Exit Lighting (Exhibit B), Fire Alarm (Exhibit C), Fire Sprinklers (Exhibit D), Clean Agent Suppression Systems (Exhibit E), and Kitchen Suppression (Exhibit F) to each location listed above, and to additional locations which may be added by Customer. All merchandise delivered to Customer's locations shall become the property of Customer. Service area and prices only apply to 48 contiguous US unless otherwise specified.

**Pricing:** Company agrees to provide to Customer the prices set forth above, Fees and Pricing. Prices will be in effect at Customer locations currently serviced by Company within thirty (30) days of the date of execution of this Agreement.

**Term:** This Agreement shall be effective as of the date listed above and shall continue until the expiration of the Agreement or thirty-six (36) months whichever is longer. This Agreement will renew with the Agreement unless one of the parties indicates in writing, within 30 days of the anniversary dates, their desire to terminate the Agreement. Either party may terminate the Agreement if, 30 days after sending the other party a written notice of all concerns via certified mail, the issues are not resolved to the originating party's satisfaction.

**Price Adjustments:** Upon each anniversary date of the execution of this Agreement, the prices then in effect shall be automatically adjusted by the amount of the percentage change in the Consumer Price Index (CPI) for the most recently available previous twelve months. In no case will the price increase exceed (five percent) 5%. The CPI used to calculate the adjustment would be the U.S. All City CPI-U, as published by U.S. Department of Labor. Company may adjust prices if Customer requests significant changes to the product fill list, service requirements, sales requirements, billing requirements, or report generation. Should Company experience any extraordinary cost increases that necessitate price changes during this contract, Company will present Customer with proposed new prices and explanation. Should Customer deny these changes, Company may choose to exclude those affected items from the program or terminate the Agreement.

**Equipment Exchange:** Customer hereby understands and agrees that in servicing Customer's fire equipment Company intends to exchange Customer's fire equipment for Company's fire equipment of similar kind and quality. Customer further acknowledges and agrees that upon completion of such exchange that all right, title and interest in the Customer's fire equipment so exchanged will belong to Company and all right, title and interest in Company's fire equipment so exchanged will belong to Customer.

**Inspection:** Company strongly recommends that Customer conduct an on-site inspection of the goods and services sold hereunder after delivery, installation or other service call. Company shall not be responsible for the consequences of Customer's failure to inspect the goods or services or for any defects, malfunctions, inaccuracies, insufficiencies or omissions.

**Insurance:** Customer agrees that neither Cintas nor its subcontractors or assignees, including, without limitation, those providing monitoring services, (collectively, "Subcontractors") are insurers and no insurance coverage is provided by this Agreement. CUSTOMER ACKNOWLEDGES AND AGREES THAT CINTAS AND ITS SUBCONTRACTORS DO NOT ASSUME ANY RESPONSIBILITY NOR SHALL THEY HAVE ANY LIABILITY FOR CLAIMS MADE AGAINST THEM CLAIMING THAT THEY ARE INSURER OR CUSTOMER'S SYSTEMS, THE FAILURE OF SUCH SYSTEMS TO OPERATE EFFECTIVELY, OR ANY OTHER TYPE OF INSURANCE COVERAGE AS AN INSURER. Customer acknowledges that during the term of the Agreement, it will maintain a policy of insurance covering public liability bodily injury, sickness or death, and losses for property damage, fire, water damage, and loss of property in amounts that are sufficient to cover all claims of Customer for any losses sustained.

**Limited Warranty:** Because of the great number and variety of applications for which Company's goods and services are purchased, Company does not recommend specific applications or assume any responsibility for use, results obtained or suitability for specific applications. Customer is cautioned to determine the appropriateness of Company's good and services for Customer's specific application before ordering and to test and evaluate thoroughly all goods before use. Company warrants that title to all goods sold by Company shall be good and marketable. THERE ARE NO OTHER WARRANTIES EXPRESSED OR IMPLIED IN CONNECTION WITH THE SALE OF GOODS AND SERVICES, INCLUDING ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. NO DISCLAIMER, EXCLUSION, LIMITATION OR MODIFICATION OF ANY OF THE AFORESAID WARRANTIES SHALL BE DEEMED EFFECTIVE UNLESS IN WRITING SIGNED BY COMPANY.

**Limited Liability:** THE LIABILITY OF CINTAS AND ITS SUBCONTRACTORS FOR ANY CLAIM WHICH CUSTOMER, ITS AGENTS, OFFICERS, DIRECTORS, EMPLOYEES OR INVITEES MAY HAVE AGAINST CINTAS PURSUANT TO THIS AGREEMENT, IN THE EVENT IT IS DETERMINED THAT CINTAS HAS ANY LIABILITY, SHALL BE LIMITED TO \$1,000.00

AS LIQUIDATED DAMAGES. If Customer wishes to increase the limitation of liability, Customer may, as of right, enter into a supplemental agreement with Cintas and obtain a higher limit by paying an additional amount consistent with the increase in liability. Company's service fees are based on the value of the services provided and the limited liability provided under this contract, and not on the value of Customer's premises or its contents, or the likelihood or potential extent or severity of injury (including death) to Customer or others. Company cannot predict the potential amount, extent, or severity of any damages or injuries that Customer or others may incur which could be due to the failure of the system or services to work as intended. As such Customer hereby agrees that the limits on the liability of Cintas and Subcontractors, and the waivers and indemnities set forth in this contract are a fair allocation of risks and liabilities between Cintas, Customer, Subcontractors and any other affected third parties.

**Fire Alarm Monitoring:** Company hereby notifies Customer that any alarm monitoring services offered or provided hereunder are subject the local codes, rules and regulations and that specific licensing, individual to a particular jurisdiction may be required to offer such services. Company may not possess the necessary licensing for some or all of these jurisdictions and as such may not offer alarm monitoring services in such jurisdictions. Company will endeavor to notify Customer of any such jurisdictions and to obtain any necessary licensing on a best efforts basis. CERTAIN CUSTOMER LOCATIONS MAY BE EXCLUDED FROM ANY ALARM MONITORING SERVICE PROVIDED OR CONTEMPLATED TO BE PROVIDED HEREUNDER. COMPANY STRONGLY RECOMMENDS THAT CUSTOMER INVESTIGATE THE REQUIREMENTS OF ALL JURISDICTIONS IN WHICH IT DESIRES ALARM MONITORING SERVICE AND TO MAKE ALL NECESSARY ACCOMMODATIONS TO SECURE SUCH SERVICE.

**Other Contracts:** The Customer certifies to Company that this Agreement in no way infringes upon any other existing agreement between Customer and another service provider. Company will begin servicing Customer locations that currently are being serviced under existing agreement with other fire service companies upon the expiration of such location's existing agreement. Customer will make a reasonable effort to provide Company with the expiration dates of all competitors' agreements within sixty (60) days of the Execution date of this Agreement.

**Terms of Payment:** Net 20 days from date of invoice. Payment shall be made within twenty (20) days of receipt of the billing.

**Notices:** All notices or other communications that may be given in connection with this Agreement shall be in writing, sent certified mail or by a reputable national delivery service, signed receipt requested. Notices given by Company shall be addressed to <insert name>, at <insert customer street address, city, state, zip>, Attention: <insert appropriate title to direct notices to and any internal department number>, or at such other address as Customer specifies by notice to Company.

Notice given by Customer shall be addressed to CINTAS CORPORATIONS at 6800 Cintas Blvd., P.O. Box 625737, Cincinnati, OH 45262-5737 Attention: Sr. Director Business Strategy & Development - Global Accounts, or at such address as Company specifies by notice to Customer. Notices are effective upon receipt.

**Entire Agreement:** This Agreement sets forth the entire agreement and understanding between the parties as to the subject matter hereof, and merges and supersedes all prior discussions, agreements and understandings of every and any nature between the parties. This Agreement may not be changed or modified, except by agreement in writing, signed by each of the parties.

**Miscellaneous:** If any provision of the Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired. This Agreement shall inure to the benefit of and be binding upon the successors and assigns of the parties hereto.

#### **Exhibit A - Service & Maintenance of Portable Fire Extinguishers**

**General Requirements:** Per NFPA 10, portable fire extinguishers shall be conspicuously located where they are readily accessible and immediately available in the event of fire. Preferably they shall be located along normal paths of travel, including exits from areas. All rechargeable-type fire extinguishers shall be recharged after any use, as indicated by an inspection or when performing maintenance.

**Inspection Procedures:** Periodic inspection of fire extinguishers shall include a check to verify at least the following items:

- Extinguisher is in its designated location
- There are no obstructions to access or visibility
- Pressure gauge reading or indicator is in the operable range or position
- Operating instructions on nameplate are legible and face outward
- Safety seals and tamper indicators are not broken or missing
- Fullness is determined by weighing or "hefting"
- There is no obvious physical damage, corrosion, leakage, or clogging of the nozzle
- Condition of tires, wheels, carriage, hose, and nozzle are checked (wheeled extinguishers only). When an inspection of any fire extinguisher reveals a deficiency in any of the conditions listed above, immediate corrective action shall be taken.

**Inspection Recordkeeping:** Personnel making inspections shall keep records of all fire extinguishers inspected, including those found to require corrective action. At least monthly, the date the inspection was performed and the initials of the person performing the inspection shall be recorded. Records shall be kept on a tag or label attached to the fire extinguisher, on an inspection checklist maintained on file, or in an electronic system (e.g., bar coding) that provides a permanent record.

**Annual Maintenance Requirements:** Maintenance, as defined by NFPA10, is a "thorough examination" of the fire extinguisher. It is intended to give maximum assurance that a fire extinguisher will operate effectively and safely. It includes a thorough examination for physical damage or condition to prevent its operation and necessary repair or replacement. It will normally reveal if hydrostatic testing or internal maintenance is required. Fire extinguishers shall be subjected to maintenance at intervals not more than one year, at the time of hydrostatic test, or when indicated by an inspection.

**Maintenance Procedures:** Maintenance of portable fire extinguishers, as performed by Cintas Fire Protection, includes the following Cintas 10-Step Quality Assurance Procedures:

1. Visually inspect the extinguisher - The extinguisher is removed from its bracket. The extinguisher label is checked to ensure that the instructions are legible and unobstructed. The cylinder is inspected for corrosion, abrasion, or dents (including under removable bands). The extinguisher is inspected for missing, substitute, or broken parts.
2. Check the hydrostatic and maintenance dates - The date of manufacture is checked on the unit. The most recent hydrostatic test and six-year maintenance dates are noted and the applicable service procedure (hydrostatic test or six-year maintenance) is performed.
3. Verify extinguisher is full - Hand portable extinguishers are weighed or "hefted" to assure that they are fully charged with chemical (cartridge-operated extinguishers are visually inspected for fullness). If necessary, the extinguisher is recharged.
4. Visually inspect the pressure gauge - For stored pressure extinguishers, the gauge is checked for damage. The operating pressure is checked to assure that the extinguisher is properly charged.

5. Remove the tamper seal and safety pull pin - The plastic tamper seal is removed and the safety pull pin is removed to assure that it is not bent and operates freely. A new listed, color-coded Cintas tamper seal is installed.
6. Check the discharge hose for continuity - A continuity test is conducted on all carbon dioxide hose assemblies to assure that they are properly grounded. A continuity test label is attached to CO2 discharge hoses that pass the continuity test.
7. Inspect all instruction labels - Verify that the operating instructions are present, legible, and facing outward and the appropriate HMIS (Hazardous Material Identification System) information is present and legible.
8. Clean and re-hang the extinguisher - The extinguisher is wiped down to remove dust and debris. The hanging bracket is checked to assure that the correct bracket is being used and that the bracket is securely installed. The extinguisher is re-hung on the bracket or in its cabinet.
9. Review the extinguisher placement, size, and type - The size, type and placement of the extinguisher are checked to assure it is appropriate for the hazard area. Additional record keeping is completed as required.
10. Attach a new certification tag - For those extinguishers that pass the applicable maintenance procedures, a color-coded Cintas Certification Tag is attached to the extinguisher. The Certification Tag includes the month and year maintenance was performed, and the name of the Cintas Partner performing the work. The Certification Tag is valid for one year from the month punched, and documents that the equipment is in compliance with State, Local and National Fire Codes.

**Hydrostatic Test/6-Yr Maintenance:** Hydrostatic testing, as defined by NFPA 10, is pressure testing of an extinguisher to verify its strength against unwanted rupture. Hydrostatic test intervals for portable fire extinguishers are generally at 5 and 12-year intervals. (Refer to NFPA 10 for more specific details.)

**Hydrostatic Test Intervals:** Extinguisher Type Interval: Water-Based-5, Carbon Dioxide-5, Dry Chemical-12, Halogenated Agents-12, Dry Powder (Class D)-12. Every six years, stored pressure fire extinguisher.

**Maintenance Recordkeeping:** Location Surveys in addition to the required Certification Tag, Cintas documents the location, type, size and service condition of all fire extinguishers inspected or maintained. These Location Surveys are available to our customers. The Location Surveys can serve as proof of service for insurance underwriting purposes, for local Fire Code compliance, and can be used as a budgeting tool to forecast future service requirements. Each extinguisher that has undergone maintenance that includes internal examination or has been recharged shall have a "Verification of Service" collar around the neck of the container. Cartridge-operated and cylinder operated fire extinguishers do not require a "Verification of Service" collar.

#### **Exhibit B - Emergency and Exit Lighting**

**Inspection of Emergency and Exit Lighting:** Cintas Fire Protection uses the National Fire Protection Association (NFPA) Standards NFPA 101 - *Life Safety Code* and NFPA 70 - *National Electric Code* as a guide for establishing its Scope of Services for inspection and maintaining emergency lighting equipment.

**General Requirements:** The equipment owner is responsible for assuring that illuminated Emergency Exit Signs and Emergency Lights ("E-Lights") are properly maintained. Occupants can be in peril if critical routine maintenance is neglected, or is not performed by properly trained individuals with the correct tools, equipment and replacement parts.

**Annual Test:** E-Lights are required to be tested at least annually. The annual test Cintas performs includes the following:

- Check for physical damage to the exterior of the unit (test switch, pilot lamp, broken heads, etc.)
- Check the operation of the unit by exercising the test button
- Open the unit and checking the tightness and cleanliness of battery terminals
- Measure the battery "Float Voltage" with a DC Voltmeter to assure that the battery charger is functioning properly
- Use a Battery Analyzer to perform a Battery Load Test (or Battery Burn Test as may be required by Local authority) to assure that the battery is functioning properly
- Verify that all lamps are working properly
- Replace defective parts as needed (batteries and bulbs)

**Annual Test Recordkeeping:** Cintas affixes a label to all E-Lights that have been tested, indicating the date the test was conducted, the type of test conducted, and the name of the Cintas Partner performing the work. In addition to the required Certification Label, Cintas documents the location and type of all E-Lights tested. These Location Surveys are available to our customers. The Location Surveys can serve as proof of service for insurance underwriting purposes, for local Fire Code compliance, and can be used as a budgeting tool to forecast future service requirements.

#### **Exhibit C - Fire Alarm and Detection Systems**

**Introduction:** Fire detection and alarm systems are designed to detect fires and fire conditions, and to initiate audible and/or visual signals that warn building occupants and supervisory personnel of fire and other unsafe conditions. Cintas Fire Protection uses the National Fire Protection Association (NFPA) Standard 72 - *National Fire Alarm Code* as a guide for establishing its Scope of Service for installing, inspecting, and maintaining fire detection and alarm systems.

**Inspection Requirements:** The facility owner is required to have the detection and alarm system components visually inspected annually, semi-annually, quarterly, or monthly, with Table 10.3.1 of NFPA 72. More frequent inspections may be required by the local authority having jurisdiction.

**Semi-Annual Testing Requirements:** The facility owner is required to have the detection and alarm system components tested in accordance with Table 10.4.3 of NFPA 72. More frequently testing may be required by the local authority having jurisdiction. Cintas recommends that the customer have the detection and alarm system tested at least semi-annually (every six months). Semi-annual and annual inspection and testing procedures may vary slightly according to NFPA and Local requirements.

**System Detail:** The Testing and Inspection Service shall be completed on the listed Fire Alarm System along with its components at the frequency as indicated below. The fire alarm interface to auxiliary systems (fans, dampers, generators, pumps, specialty detection or suppression, etc.) will be tested only through the fire alarm control or monitoring module. Functional testing of auxiliary systems, as required by respective code or manufacturer, is excluded unless specifically mentioned in this proposal. A Detailed Cintas Scope of Services including Testing Procedures is available upon request. Refer also to NFPA 72 and other applicable documents for more detailed information.

#### **Exhibit D - Automatic Fire Sprinkler Systems**

**Introduction:** Automatic sprinkler systems are designed to detect fires, release water, and suppress fires. Well-maintained sprinkler systems are highly reliable and provide protection of both people and property. Cintas Fire Protection uses the National Fire Protection Association (NFPA) Standard 25 - *Inspection, Testing, and Maintenance of Water-Based Fire Protection Systems* as guide for establishing its Scope of Service for inspecting, testing and maintaining automatic sprinkler systems.

**Inspection Requirements:** The facility owner is required to have the automatic sprinkler system components visually inspected in accordance with NFPA 25. More frequent inspections may be required by the local Authority Having Jurisdiction (AHJ).

**Testing/Inspection Requirements:** The facility owner is required to have the automatic sprinkler system components tested annually, semiannually, quarterly, or monthly, in accordance with NFPA 25. More frequent testing may be required by the local Authority Having Jurisdiction.

**System Detail:** The Testing and Inspection Service shall be completed on the listed Automatic Fire Sprinkler along with its components at the frequency as indicated below. Functional testing of auxiliary systems, as required by respective code or manufacturer, is excluded unless specifically mentioned in this proposal. A Detailed Cintas Scope of Services including Testing Procedures is available upon request. Refer also to NFPA 25 and other applicable documents for more detailed information.

#### **Exhibit E - Clean Agent Suppression Systems**

**Introduction:** Clean agent fire suppression systems are widely used in today's high-tech environments to help limit the damage that can occur from a fire - both costly business interruption and damage to expensive and electronically sensitive equipment. Cintas Fire Protection uses the National Fire Protection Association (NFPA) Standard 2001 - *Standard on Clean Agent Extinguishing Systems* and (NFPA) Standard 72 - *National Fire Alarm Code* as a guide for establishing its Scope of Service for inspecting and maintaining clean agent fire suppression systems.

**Monthly Inspection Requirements:** The facility owner is required to have the clean agent fire suppression system components visually inspected on a monthly basis to assess the suppression system's operational condition.

**Semi-Annual Testing Requirements:** The facility owner is required to have the clean agent suppression system tested semi-annually (every six months) in accordance with the manufacturer's instructions. More frequent testing may be required by the local authority having jurisdiction.

**Clean Agent Fire Suppression System Detail:** The Testing and Inspection Service shall be completed on the listed Clean Agent Fire Suppression System at the frequency as indicated below. A Detailed Cintas Scope of Services including Testing Procedures is available upon request. Refer also to NFPA 2001, NFPA 72 and other applicable documents for more detailed information. Inspection will be performed in accordance with the requirement of NFPA 2001 and NFPA 72. Any exceptions will be noted.

#### **Exhibit F - Kitchen Hood Fire Suppression Systems**

**Introduction:** Wet chemical fire suppression systems used in commercial cooking operations have an excellent record of helping suppress cooking fires when the systems are properly installed and maintained. Cintas Fire Protection uses the National Fire Protection Association (NFPA) Standards 17A - *Wet Chemical Extinguishing Systems* and NFPA 96 - *Ventilation Control and Fire Protection of Commercial Cooking Operations* as a guide for establishing its Scope of Service for inspecting, maintaining, recharging, and hydrostatically testing kitchen fire suppression systems.

**General Requirements:** Cooking equipment that produces grease-laden vapors and that might be a source of ignition of grease in the hood, grease removal device, or duct of commercial cooking operations shall be protected by fire extinguishing equipment. Examples of cooking equipment that produce grease-laden vapors include, but are not limited to, appliances such as deep-fat fryers, ranges, griddles, broilers, woks, tilting skillets, and braising pans. Fire-extinguishing equipment shall include both automatic fire-extinguishing systems as primary protection and portable fire extinguishers as secondary backup. Newly installed kitchen suppression systems shall comply with the UL 300 fire test standard. In existing systems, when changes are made in the cooking media, positioning, or replacement of the cooking equipment occur, the system owner shall be responsible for assuring that the fire extinguishing system complies with UL 300. The system owner shall also assure that changes or modifications to the hazard after installation of the fire extinguishing systems shall result in the re-evaluation of the system design by a properly trained and qualified person or company. Portable fire extinguishers shall be installed in kitchen cooking areas in accordance with NFPA 10 and shall be specifically listed for such use (i.e., they require a K Class wet chemical extinguisher).

**MASTER AGREEMENT:**  
**By and between:**  
**HARFORD COUNTY PUBLIC SCHOOLS, MARYLAND**  
**102 S. Hickory Avenue**  
**Bel Air, MD 21014**  
**AND**  
**Cintas Corporation**  
**6800 Cintas Blvd.**  
**Mason, OH 45040**

**Contract #12-JLH-011C**

THIS MASTER AGREEMENT made and entered into this 1st day of April, 2012, by and between Harford County Public Schools, Maryland (hereinafter referred to as "School District", "HCPS", or "District"), and Cintas Corporation, a corporation authorized to conduct business in the State of Maryland (hereinafter referred to as "Supplier").

This agreement is made on behalf of Harford County Public Schools, Maryland and other participating governmental agencies, through the U.S. Communities Government Purchasing Alliance.

**WITNESSETH:**

**WHEREAS**, pursuant to a request by the District, Supplier has submitted a proposal to provide a master agreement for a National Award covering the following: furnish, supply and deliver facilities solutions including the rental and service of uniforms, mats, mops and towels, and other related products and services in accordance with the scope, terms and conditions of Request for Proposal, RFP #12-JLH-011, addenda, amendments, appendices and related correspondence. The Request for Proposal is incorporated in its entirety and included as part of this agreement.

**WHEREAS**, HCPS desires to engage Supplier to perform said services; and

**WHEREAS**, HCPS and Supplier desire to state the terms and conditions under which Supplier will provide said services to Harford County Public Schools (Lead Agency) and participating public agencies who have registered with U.S. Communities.

**NOW, THEREFORE**, in consideration of the mutual covenants, condition and promises contained herein, the parties hereto agree as follows:

- A. Services:** Supplier will provide Facilities Solutions as detailed in the referenced RFP and related services for HCPS in its response to the heretofore referenced RFP to HCPS, which is attached hereto and incorporated herein as a part of this Master Agreement.
- B. Term:** The initial term of this Master Agreement shall be three (3) years from on or about April 1, 2012. This Master Agreement may then be renewed by mutual written agreement of the parties for two (2) additional, two (2) year periods.
- C. Compensation:** HCPS agrees to pay and Supplier agrees to accept as compensation for the



products provided pursuant to this Master Agreement, the following:

1. The price proposal set forth in the best and final RFP Response, dated March 15, 2012 and marked Amendment 1.

- D. **Invoicing:** Supplier agrees to invoice HCPS as deliveries are completed or charge purchases to an authorized HCPS Visa credit card. Invoices shall be delivered to HCPS accounts payable. Each invoice shall include – as applicable – the following data: Item Number, Purchase Order Number, Item Description, Quantity purchased, Unit Price, Extended price and Delivery location. All purchase orders will be invoiced separately. Each invoice submitted by Supplier shall be paid by HCPS within thirty (30) days after approval. The Supplier has agreed to accept payment via a procurement credit card (i.e. Visa, MasterCard, etc.) which is the preferred method of payment.
- E. **Insurance:** Supplier shall maintain at its own cost and expense (and shall cause any Subcontractor to maintain) insurance policies in form and substance acceptable to HCPS as detailed in the Request for Proposal.
- F. **Termination of Contract:** This contract may be terminated as per the General Information of the RFP, Section 1, K (page 5) and General Requirements, Attachment G, VIII (page 85-86).
- G. **Notification:** Notices under this Master Agreement shall be addressed as follows:

Jeffrey LaPorta, Supervisor of Purchasing  
Harford County Public Schools  
102 S. Hickory Avenue  
Bel Air, MD 21014

Supplier: Cintas Corporation  
Attn: Craig Jackson, Senior Global Account Manager  
Address: 6800 Cintas Blvd  
Mason, OH 45040  
Phone: 513-459-1200

The effective date of any notice under this Master Agreement shall be the date of receipt by the addressee. The failure of either party to give notice of default, or to strictly enforce or insist upon compliance with any of the terms or conditions of this Master Agreement, the waiver of any term or condition of this Master Agreement, or the granting of an extension of time for performance shall not constitute the permanent waiver of any term or condition of this Master Agreement. This Master Agreement and each of its provisions shall remain at all times in full force and effect until modified by the parties in writing.

- H. **Governing Law:** This contract shall be interpreted under and governed by the laws of the State of Maryland. Disputes will be settled as per the stipulations contained within the Request for Proposal.
- I. **Incorporation of Appendices:** All provisions of Appendices and Amendments are hereby incorporated herein and made a part of this Master Agreement. In the event of any

apparent conflict between any provisions set forth in the main body of the Master Agreement and any provision set forth in the Appendices and Amendments the provisions shall be interpreted, to the extent possible, as if they do not conflict. In the event that such an interpretation is not possible, the provisions set forth in the main body of this Master Agreement shall control.


- J. **Entire Master Agreement:** This Master Agreement including the entire RFP solicitation and the Appendices attached hereto contain all the terms and conditions agreed upon by both parties. No other understandings, oral or otherwise, regarding the subject matter of this Master Agreement shall be deemed to exist or to bind any of the parties hereto. Any agreement not contained herein shall not be binding on either party, nor of any force or effect. The revised Best and Final Offer contained within Amendment 1 is also included and becomes part of the Master Agreement.
  
- K. **Participating Public Agencies:** Supplier agrees to extend the same terms, covenants and conditions available to HCPS under this Master Agreement to other government agencies ("Participating Public Agencies") that, in their discretion, desire to access this Master Agreement in accordance with all terms and conditions contained herein or attached hereto. Each participating Public Agency will be exclusively responsible and deal directly with Supplier on matters relating to ordering, delivery, inspection, acceptance, invoicing, and payment for products and services in accordance with the terms and conditions of this Master Agreement. Any disputes between a Participating Public Agency and Supplier will be resolved directly between them in accordance with and governed by the laws of the State in which the Participating Public Agency exists.

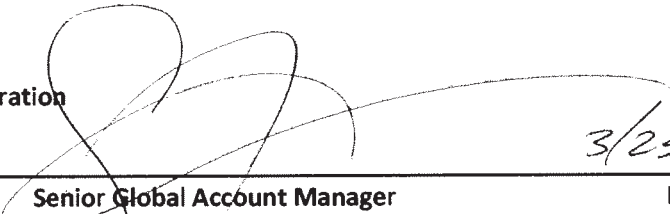
IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT IN THE YEAR AND DAY AS NOTED:

HARFORD COUNTY PUBLIC SCHOOLS, MARYLAND

by  4/12/12  
Superintendent of Schools Date

by  4/10/12  
Date

(Signature) President (Date)  
Board of Education of Harford County  
Attest: 

Cintas Corporation  
by  3/23/12  
Senior Global Account Manager Date

Attest:  3/23/12

To access pricing information, please use your login at [www.uscommunities.org](http://www.uscommunities.org).

# City of Palm Coast, Florida Agenda Item

Agenda Date:02/06/2018

<b>Department</b>	Construction Management & Engineering	<b>Amount</b>	\$100,744.00
<b>Item Key</b>		<b>Account</b>	54029083-063000-82004
<b>Subject</b>	RESOLUTION 2018-XX APPROVING PIGGYBACKING THE GOVERNMENT SERVICES ADMINISTRATION CONTRACT WITH MEDORA CORPORATION TO PURCHASE SOLARBEE UNITS FOR CIGAR LAKE WATER QUALITY IMPROVEMENTS		

**Background :**

**Update for the February 6, 2018 Business Meeting**

This item was heard by City Council at their January 30, 2018 Workshop. There were no changes suggested to this item.

**Original Background from the January 30, 2018 Workshop**

Cigar Lake is a large man-made retention pond located off of Royal Palms Parkway in Town Center. Cigar Lake is utilized for reclaimed water storage by Wastewater Treatment Plant No. 1 (WWTP) and provides reclaimed water to the southern portion of the City. The water quality at Cigar Lake is deteriorating due to the lack of natural mixing and aeration. The lack of natural mixing and aeration increases nitrogen and phosphorus levels, which causes algae blooms. Algae blooms use what little oxygen remains and increase nitrogen and phosphorous levels. The process continues to cascade into further water quality deterioration. At times, the algae can bypass filtration and clog fine sprinkler heads. In addition, nitrogen and phosphorus are regulated as part of the WWTP's operating permit.

The Construction Management & Engineering Division recommends purchasing two (2) SolarBee mixers for aeration of Cigar Lake. The SolarBee units provide continuous circulation of water and aeration to improve water quality. Higher oxygen reduces nitrogen and phosphorous levels, and further reduces algae blooms. Utilizing the SolarBee mixers ensures the lake water is maintained within permitted limits, reduces algae and eliminates potential problems with irrigation systems.

City staff is recommending that City Council approve piggybacking the Government Services Administration contract with Medora Corporation to purchase two (2) SolarBee mixers for aeration of Cigar Lake. Piggybacking existing competitively bid contracts is advantageous since the pricing is generally more competitive than the price we would obtain on our own. Furthermore, the City does not have to incur the expense and delay of soliciting our own bid.

The total cost of the units with installation under the piggyback contract pricing is \$100,744.00. This project is in the Utility 5-year Capital Improvement Plan and is budgeted for Fiscal Year 2018.

**SOURCE OF FUNDS WORKSHEET FY 2018**

**Wastewater UT: reclaimed water improvement**

<b>54029083-063000-82004</b>	<b>\$1,700,000.00</b>
Total Expenses/Encumbered to date	\$0
Pending Work Orders/Contracts	\$100,744.00
<b>Balance</b>	<b>\$1,599,256.00</b>

**Recommended Action :** Adopt Resolution 2018-XX approving piggybacking a Government Services Administration contract with Medora Corporation to purchase SolarBee mixers for Cigar Lake water quality improvements.

**RESOLUTION 2018-\_\_\_\_**  
**PIGGYBACKING THE GOVERNMENT SERVICES ADMINISTRATION  
CONTRACT WITH MEDORA CORPORATION, FOR SOLARBEE MIXERS**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PALM COAST, FLORIDA, APPROVING PIGGYBACKING THE GOVERNMENT SERVICES ADMINISTRATION CONTRACT WITH MEDORA CORPORATION TO PURCHASE SOLARBEE MIXERS; AUTHORIZING THE CITY MANAGER, OR DESIGNEE, TO EXECUTE THE NECESSARY DOCUMENTS; PROVIDING FOR SEVERABILITY; PROVIDING FOR CONFLICTS; PROVIDING FOR IMPLEMENTING ACTIONS AND PROVIDING FOR AN EFFECTIVE DATE.**

WHEREAS, the City of Palm Coast desires to purchase SolarBee mixers for the Cigar Lake retention pond; and

WHEREAS, Medora Corporation desires to sell the aforementioned SolarBee mixers to the City of Palm Coast.

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

**SECTION 1. APPROVAL OF PIGGYBACK CONTRACT.** The City Council of the City of Palm Coast hereby approves the terms and conditions of the piggyback contract with Medora Corporation., 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 necessary documents.

**SECTION 3. SEVERABILITY.** It is hereby declared to be the intention of the City Council that the sections, paragraphs, sentences, clauses and phrases of this Resolution are severable, and if any phrase, clause, sentence, paragraph or section of this Resolution shall be declared unconstitutional by the valid judgment or decree of a court of competent jurisdiction, such unconstitutionality shall not affect any of the remaining phrases, clauses, sentences, paragraphs and sections 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 ADOPTED** by the City Council of the City of Palm Coast, Florida, on this 6<sup>th</sup> day of February 2018.

**CITY OF PALM COAST, FLORIDA**

*ATTEST:*

\_\_\_\_\_  
MILISSA HOLLAND, MAYOR

\_\_\_\_\_  
VIRGINIA A. SMITH, CITY CLERK

Attachment: Exhibit A-Piggyback Contract with Medora Corporation

Approved as to form and legality

\_\_\_\_\_  
William E. Reischmann, Jr., Esq.  
City Attorney



**Meeting Calendar for 1/31/2018 through 3/31/2018**

**2/6/2018 10:00 AM**

Animal Control Hearing  
City Hall

**2/6/2018 6:00 PM**

City Council  
City Hall

**2/7/2018 10:00 AM**

Code Enforcement Board  
City Hall

**2/13/2018 9:00 AM**

City Council Workshop  
City Hall

**2/16/2018 8:30 AM**

Volunteer Firefighters' Pension Board  
Fire Station #25

**2/20/2018 9:00 AM**

City Council  
City Hall

**2/21/2018 5:30 PM**

Planning & Land Development Regulation Board  
City Hall

**2/22/2018 5:00 PM**

Beautification and Environmental Advisory Committee  
City Hall





**Meeting Calendar for 1/31/2018 through 3/31/2018**

**2/27/2018 9:00 AM**

City Council Workshop  
City Hall

**3/6/2018 6:00 PM**

City Council  
City Hall

**3/7/2018 10:00 AM**

Code Enforcement Board  
City Hall

**3/13/2018 9:00 AM**

City Council Workshop  
City Hall

**3/14/2018 6:30 PM**

Leisure Services Advisory Committee  
City Hall

**3/20/2018 9:00 AM**

City Council  
City Hall

**3/21/2018 5:30 PM**

Planning & Land Development Regulation Board  
City Hall

**3/22/2018 5:00 PM**

Beautification and Environmental Advisory Committee  
City Hall



**Meeting Calendar for 1/31/2018 through 3/31/2018**

**3/27/2018 9:00 AM**  
City Council Workshop  
City Hall

#	File #	Item	Title	Staff
			<b>Business 2/6/2018</b>	
1		Resolution	Piggyback St. John's County contract with Chemtrade Inc. for Liquid Aluminum Sulfate	Adams/Ashburn
2		Resolution	Piggy back Lee County Contract with Miller Pipeline for installation of Ex Liner Systems	Adams/Ashburn
3		Resolution	Water Treatment Plant #1 Lime Slaking System Replacement	Adams/Hogan
4		Resolution	Water Treatment Plant #1 Lime Sludge Removal, Haul and Disposal	Adams/Hogan
5		Resolution	Fee Structure Park N Rec Facilities	Boyer
		Pesentation	Rotary Presentation of \$400.00 to PC Volunteer Firefighters for their assistance with Fantasy of Lights	Butler
6		Resolution	Belle Terre/SR 100 and Wellfield/US 1 Intersection Improvements	Castello/Cote
7		Resolution	Architectural Services Continuing Services Contracts	Cote
8		Resolution	RFS Search Firms	Falgout
9		Resolution	Uniforms	Falgout
10		Resolution	Approving Piggybacking the Government Services Administraton Contract with Medor Corporation to Purchase Solarbee Units for Cigar Lake Water Quality Improvements	Kronenberg
11		Ordinance 2nd	Wireless Telecommunications Facilities of the Unified Land Development Code	Meehan/Streichsbier
12		Ordinance 2nd	Wireless Telecommunications ROW Utilization	Meehan/Streichsbier
13		Ordinance 2nd	Rezoning 40 Colechester Lane from MFR-1 to SFR-1	Meehan
14		Presentation	Calendar awards	Mini
15		Resolution	FiberNet	Streichsbier
			<b>Workshop 2/13/2018</b>	
1		Resolution	FEMA Hazard Mitigation Grant for Pump Station Generators	Adams/Matthews
2		Resolution	Approving the Annual Purchase of Life Scans for the Fire Department	Beadle
2		Presentation	National Citizens Survey	Bevan
3		Resolution	Purchase/Installation Primary Clarifier Process Equipment WWTP#1	Blake
5		Resolution	Change Order Old Kings Road	Cote
6		Resolution	Change Order Old Kings Road Widening	Cote
7		Resolution	Holland Park Phase II	Cote/Knopf
8		Resolution	Sesame Boulevard	Cote/Costello

9	Resolution	Holland Park Architectural Services	Cote
10	Ordinance	Comp Plan Amendment WSFWP	Papa
		<b>Business 2/20/2018</b>	
1	Resolution	FEMA Hazard Mitigation Grant for Pump Station Generators	Adams/Matthews
2	Resolution	Approving the Annual Purchase of Life Scans for the Fire Department	Beadle
3	Resolution	Purchase/Installation Primary Clarifier Process Equipment WWTP#1	Blake
7	Resolution	Holland Park Phase II	Cote/Knopf
9	Resolution	Holland Park Architectural Services	Cote
8	Resolution	Sesame Boulevard	Cote/Costello
5	Resolution	Change Order Old Kings Road	Cote
6	Resolution	Change Order Old Kings Road Widening	Cote
7	Presentation	Utility Awards	Lane
8	Ordinance	Comp Plan Amendment WSFWP	Papa
		<b>Workshop 2/27/2018</b>	
		<b>Business 3/6/2018</b>	
		<b>Workshop 3/13/2018</b>	
	Presentation	Annual Progress Report	Bevan
		<b>Business 3/20/2018</b>	
1	Presentation	CAFR Presentation	Alves
		<b>Workshop 3/27/2018</b>	
1	Presentation	SAP Evaluation Workshop #1	
		<b>Business 4/3/2018</b>	
		Citizen's Academy Graduation	Lane
		<b>Business 4/24/2018</b>	
	Presentation	SAP Evaluation Workshop #2	Bevan
		<b>Business 5/1/2018</b>	
	Presentation	SAP Proposed Updates and Additional Priorities Adoption	Bevan
		<b>Business 5/8/2018</b>	
	Presentation	SAP Proposed Updates and Additional Priorities Adoption	Bevan
		<b>Business 6/5/2018</b>	
	Presentation	Citizen's Academy Graduation	Lane
		<b>Business 10/16/2018</b>	

		Presentation	Citizen's Academy Graduation	Lane
			<b>Future</b>	
1		Resolution	Master Plan SCADA Telemetry Standardization	Adams/Hogan
2		Resolution	Annual Fire Inspection Fees	Alves
3		Presentation	SAP Proposed Updates and Additional Priorities Adoption 5/1	Alves/Williams
4		Resolution	Presentation to City Council - Year to Date Budget Results 5/8	Alves/Williams
5		Presentation	Fund Accounting and Long Term Planning 5/29	Alves/Williams
6		Presentation	Property Tax and Other Revenue 6/12	Alves/Williams
7		Presentation	General Fund and TRIM Rate 7/10	Alves/Williams
8		Resolution	Proposed Millage Rate 7/17	Alves/Williams
9		Presentation	Proprietary and Special Revenue Funds 8/14	Alves/Williams
10		Resolution	Budget Workshop - Final Proposed Budget 8/28	Alves/Williams
11		Resolution	Permit compliance with NECGA (MOU and Conservation easement)	Bevan
12		Presentation	Annual Progress Report 3/13	Bevan
13		Presentation	SAP Evaluation #1 3/27	Bevan
14		Presentation	SAP Evaluation #2 4/24	Bevan
15		Presentation	SAP Proposed Updates and Additional Priorities 5/8	Bevan
16		Resolution	Purchase/Installation Ozone Odor Control Unit WWTP #1	Blake
17		Resolution	Purchase/Installation Primary Clarifier Process Equipment WWTP #1	Blake
18		Presentation	10 year Capital Improvement forecast 4/10	Cote
19		Presentation	Finalize 5 Year CIP 7/31	Cote
20		Ordinance	Charter Amendment Draft Ordinance (if any)	Council
21		Resolution	Property Exchange NECGA	Falgout
22		Resolution	Purchase Fire Truck	Forte
23		Presentation	Health and Safety Calendar Contest	Mini
24		Ordinance 1st	Coastal Trace FLUM	Papa
25		Ordinance 1st	Coastal Trace Rezoning	Papa
26		Ordinance	Rezoning Roberts Rd - FL Landmark Communities Properties	Papa
27		Ordinance	Rezoning Roberts Rd - Tuesday Corporation Property	Papa
28		Ordinance	Rezoning Roberts Road - Smith Properties	Papa
29		Ordinance 2nd	Comp Plan Amendment WSFWP	Papa