

City of South Daytona

Office of the City Manager

Post Office Box 214960 • South Daytona, FL 32121 • 386/322-3010 • Fax 386/322-3008



MEMORANDUM

To: The Honorable Mayor and Members of the City Council
From: James L. Gillis, Jr., City Manager
Re: Consideration of awarding the sale of the Wireless Communication Facility (Cell Tower) located at 1770 Segrave Street to American Tower Corporation in the amount of \$2,725,000 contingent on the successful negotiation of an acceptable purchase agreement.
Date: September 10, 2021

AGENDA ITEM

Item # E20

Date: September 13, 2021

In 1992 the city leased a portion of the Public Works yard located at 1770 Segrave Street to Bell South Mobility for construction of a Wireless Communication Facility. After 25 years, in 2017, the lease expired and the city assumed ownership of the tower per the contract. The city currently receives \$87,778 annually from the lease agreements with New Cingular Wireless and T-Mobile. Of those funds received, \$50,000 is set aside each year for future maintenance expenses and \$10,000 is budgeted to the attorney firm of Gray Robinson for legal management of the lease agreements. This translates to the city only being able to utilize a small portion of the revenue received. Due to rapidly evolving technologies, the future of cell towers is uncertain. In addition, the management of a cell tower site requires employees with a specific knowledge and the ability to climb the tower when needed for inspections, which a city of our size cannot afford to retain. For these reasons, the financial benefits of the sale of the cell tower outweigh the unknown long-term retention of the asset.

The City issued a Request for Proposals (RFP) for sale of the of the Wireless Communication Facility (Cell Tower) at 1770 Segrave Street. Staff researched the leaders of the wireless communication industry and reached out to 9 companies and two of the largest wireless infrastructure associations. Five (5) proposals were received as well as two (2) additional proposals arriving past the closing deadline.

Proposals were received until Thursday, August 17, 2021, at 2:00pm which were publicly opened immediately following the closing time. Proposals were received from American Tower, APC Towers, CTI Towers, Everest Infrastructure Partners, and TowerCo. The late proposals were returned unopened per the RFP.

City Attorney Vose, Finance Director Oliva and City Manager Gillis reviewed the proposals and determined that presentations were necessary from the two top proposers. Presentations and negotiations were conducted on August 31, 2021. The top proposers submitted their best offer and the committee reviewed those on September 8, 2021. For the sale amount of \$2,725,000, American Tower was selected by the committee as the top proposer.

If the council desires to sell the Wireless Communication Facility, staff requests authorization to negotiate an acceptable purchase agreement. If a beneficial agreement cannot be reached with the top proposer, staff will be authorized to meet with the subsequent proposer for an acceptable purchase agreement.



CONFIDENTIAL

September 2, 2021

VIA ELECTRONIC MAIL

City of South Daytona
1672 South Ridgewood Avenue
South Daytona, FL 32119

Dear Sir/Madam:

This letter of intent ("Letter") sets forth the basic terms of a possible purchase by American Towers LLC, or one of its wholly owned subsidiaries or affiliates ("American Tower"), from City of South Daytona, a Florida municipality ("Seller"), of one (1) multi-user telecommunications tower facility (the "Tower"), as listed on Schedule A.

1. **Assets to be Purchased.** American Tower's offer is for the following (collectively, the "Assets"): (i) a perpetual exclusive easement to be conveyed by Seller to American Tower for the land underlying the Tower (the "Site"), with sufficient space to permit continued operations at the Site, together with non-exclusive easements for access and utility purposes to allow American Tower to access and service the Site; (ii) Seller's entire right, title and interest in and to the Tower, together with all related improvements, fixtures and personal property; (iii) Seller's entire right, title and interest in and to all of those leases, subleases, licenses and other agreements which grant others a right to use or occupy a portion of the Tower or Site (the "Collocation Agreements"); (iv) Seller's entire right, title and interest in and to any permit associated with the Tower or Site; and (v) Seller's entire right, title and interest in and to any other personal or real property or rights associated with the Tower or Site.
2. **Consideration.** Based on the information provided to date, American Tower is willing to purchase the Assets for **Two Million Seven Hundred Twenty-Five Thousand and 00/100 US Dollars (\$2,725,000.00)** payable in cash (the "Purchase Price"). This offer is subject to satisfactory completion of due diligence and execution of definitive agreements. American Tower has sufficient cash on hand to pay the Purchase Price, and therefore our offer is not contingent upon obtaining financing.
3. **Assumptions.** The Purchase Price is based upon numerous assumptions regarding the Assets including, but not limited to, the following:
 - On the date that American Tower purchases the Assets (the "Closing Date"), the annualized rent revenue due to Seller under the Collocation Agreements will be a minimum of **Eighty-Seven Thousand Seven Hundred Seventy Eight and 80/100 US Dollars (\$87,778.80)** (the "Rent Revenue") and would be from

collocations that are fully installed and for which billing has commenced as of the Closing Date.

- American Tower will assume no liabilities at closing, except: (i) the current liabilities associated with the contracts American Tower would assume in connection with operating the Assets, including the Collocation Agreements, and (ii) those liabilities as agreed to by American Tower as part of the Purchase Agreement (as defined below).
 - Seller owns the Site in fee simple.
 - The Collocation Agreements are in full force and effect and are not in default.
 - The Collocation Agreements obligate the tenants and licensees to pay all fees and utilities associated with their operations at the Site.
 - Schedule A to this Letter, the financial information and all other information provided by Seller related to the Assets are true and correct in all material respects.
 - The Assets will be transferred to American Tower free and clear of all liabilities, liens, obligations, and encumbrances, including liabilities under financing and capital leases, but excluding customary permitted liens or other obligations agreed to by the parties.
4. **Definitive Purchase Agreement**. Upon full execution and delivery of this Letter, the parties will negotiate a definitive purchase agreement (the “**Purchase Agreement**”) setting forth the terms and conditions of the transaction. Either party may cease negotiations at any time, for any reason, prior to entering into the Purchase Agreement by providing written notice to the other party.
- The Purchase Agreement will contain provisions for a tower asset purchase transaction, including representations and warranties, covenants and indemnifications as agreed to by the parties, and would further provide the following:
- **Closing Date**. The parties agree to use good faith efforts to expedite the closing so that it occurs on or before the date which is ninety (90) days following the full execution of the Purchase Agreement.
 - **Financial Representations of Seller**. Seller will represent and warrant that the Collocation Agreements are in full force and effect, were entered into in the ordinary course of business, and that the Rent Revenue is accurate.
5. **Other Terms**. American Tower’s obligations to close would be expressly contingent upon the receipt of all necessary internal and third party approvals and consents, confirmation that the assumptions set forth in Paragraph 3 are true, and satisfactory completion of its due diligence regarding the operation of the Assets, including, but not limited to, the condition and physical attributes of the Site, the structural capacity for additional tenant collocations, the terms and conditions of the Collocation Agreements, title, and the quality of documentation regarding the Site.

6. **Delivery of Draft Agreement.** After the full execution and delivery of this Letter, American Tower is prepared to deliver a first draft of the Purchase Agreement to Seller substantially in accordance with the terms of this Letter.
7. **Due Diligence Review.** Within three (3) business days following the execution of this Letter, Seller agrees to provide American Tower the following documentation relating to the Assets: (i) all FAA and FCC documentation, excluding any FCC licenses, if any, held by Seller related to transmitting or receiving telecommunication signals at the Site; (ii) any permits and government approvals relating to the Site; (iii) environmental reports and documentation relating to the Site; (iv) any drawings, plans or surveys relating to the Assets; (v) any geotechnical reports; (vi) sufficient data, and access to personnel and documentation, to perform a detailed proof of cash receipts and disbursements for the three most recent monthly periods; (vii) any SNDAs or similar agreements; (viii) copies of each Collocation Agreement; and (ix) legal descriptions of the Site (collectively, the "**Due Diligence Materials**"). American Tower will use commercially reasonable efforts to complete its due diligence review within ninety (90) days following the full execution of the Purchase Agreement.
8. **Expenses of Transaction.** Each party will be responsible for its own expenses, Seller will pay any transfer taxes, and American Tower will pay any recording fees.
9. **Authority of Seller.** Seller represents and warrants to American Tower that Seller's negotiations, execution, delivery and performance of this Letter or a Purchase Agreement substantially as described above will not violate, conflict with, or result in the breach of the terms of, any agreement by which Seller or any part of the Assets is bound.
10. **Operation in Ordinary Course.** Seller will operate the Assets in the usual and ordinary course and in conformity in all material respects with all applicable laws, ordinances, regulations, rules, or orders, and will use its best efforts to preserve both the continued operation of the Assets and Seller's relationships with its customers, suppliers, and others having business relations with Seller related to the Assets.
11. **Exclusive Negotiations.** In consideration of anticipated expenses to be incurred by American Tower in pursuing its acquisition of the Assets, Seller agrees that after signing this Letter, Seller, its employees, agents and representatives will neither discuss nor negotiate, directly or indirectly, with any other possible buyer, nor entertain nor consider any inquiries or proposals relating to the possible disposition of the Assets or of any part of the Assets, unless the parties have ceased negotiations of the Purchase Agreement pursuant to paragraph 4 of this Letter.
12. **Public Announcements; Confidentiality.** Neither party shall issue any press release or otherwise make any public statements with respect to this Letter or the transactions contemplated by this Letter and shall not issue any such press release or make any such public statement, except as may be required by applicable law or pursuant to the rules of any stock exchange, in which case the issuing party shall use all commercially reasonable efforts to consult with the other party and agree upon the nature, content and form of such press release or public statement. All confidential information furnished to Seller or its respective affiliates or representatives, including without limitation this Letter and the transaction contemplated by this Letter, will be kept confidential by Seller and by any such affiliates or representatives; provided that Seller may provide such information on a

confidential basis to their respective financing sources, affiliates and professional advisors, each of whom Seller shall cause to keep such confidential information confidential.

13. **Nonbinding Agreement.** The parties acknowledge that, except as expressly set forth in this Letter, this Letter is non-binding and the various terms to be included in the Purchase Agreement remain to be negotiated. While the parties agree in principle to the content of this Letter and propose to reasonably proceed to negotiate the Purchase Agreement and any related agreements, neither party shall have any obligations or duties to the other party except as set forth in paragraphs 11, 12 and 13 of this Letter (which are binding and enforceable obligations of the parties), unless and until a Purchase Agreement has been executed and delivered.
14. **Expiration.** If American Tower does not receive an executed copy of this Letter from Seller by 5:00 PM, Eastern Time, on **September 30, 2021**, we will assume that you have no further interest in pursuing this matter and this Letter will be of no further force and effect. Please note that the terms in this Letter are based on exclusive negotiations between Seller and American Tower and we would not be inclined to participate in an auction process for the Assets. This Letter will be immediately void and of no further force and effect if Seller, its employees, agents or representatives markets all or a portion of the Assets for sale to any other party, or, directly or indirectly, solicits, negotiates or considers any other inquiries or proposals relating to a possible disposition of all or a portion of the Assets.

[Signature page follows.]

If the foregoing is acceptable and represents your understanding, please sign below to indicate your agreement and confirm your intent to proceed with negotiations consistent with the terms of this Letter. This Letter may be executed in several counterparts, each of which when so executed and delivered shall be deemed an original and all of which together shall constitute one and the same instrument. A digital or electronic signature on this Letter shall be deemed an original and binding.

Very truly yours,

American Towers LLC,
a Delaware limited liability company

DocuSigned by:
By:  _____
9F97AE5066E5F4B6...

Name: Chad Lindner

Title: VP, Legal

AGREED & ACCEPTED, this _____ day of _____, 2021

City of South Daytona,

By: _____

Name: _____

Title: _____

SCHEDULE A-SITE LIST

Tower Name	Land Tenure	State (Abbreviation)	Structure Type	Height	Latitude	Longitude
South Daytona	Easement	FL	Self-Support	190 ft.	29.178526	-81.009131