

CONTRACT OF SALE

This contract of sale (this "Agreement"), effective as of the date of the last signature below (the "Effective Date"), is made by and between the Petersburg Borough, P.O. Box 329, Petersburg, Alaska, 99833 (hereinafter "Seller"), and the Central Council of the Tlingit & Haida Indian Tribes of Alaska, doing business as Tidal Network, P.O. Box 25500, Juneau, Alaska 99802 (hereinafter "Buyer"). Seller and Buyer are collectively referred to hereinafter as the "parties."

Recitals

A. Seller, as successor-in-interest to the City of Petersburg, is the owner of the following real property, located in the Petersburg Recording District, First Judicial District, State of Alaska:

An unsubdivided parcel, approximately .23 acre in size (10,036± sq.ft.), located within U.S.S. 1168, Petersburg Townsite, as more specifically shown on Exhibit A hereto (the "parcel")

B. Buyer has requested to purchase the parcel to install and construct a communication tower to support the expansion of fixed wireless broadband coverage in the community (the "project").

Therefore, Seller hereby agrees to sell and convey, and Buyer agrees to purchase, the parcel upon the following terms and conditions and those set out in Petersburg Borough Assembly Resolution #2026-16, incorporated herein by reference:

1. Purchase Price. The total purchase price for the parcel is \$45,000.00 (the "purchase price").
2. Payment of Purchase Price; Costs of Sale. A deposit equal to a minimum of five percent (5%) of the purchase price shall be paid to Seller within five (5) business days of the effective date. The balance of the purchase price shall be paid in full to Seller at the time of conveyance of the parcel to Buyer. Conveyance shall take place within thirty (30) days of satisfaction of the contingencies set out below in Subsections 3(A) and (B). Buyer is responsible for all costs of sale and closing of the transaction, including without limitation costs set out in Petersburg Municipal Code (PMC) 16.12.090, any title insurance premiums, escrow fees or closing costs, recording fees, and the commission of any real estate agent or broker representing Buyer in this transaction. In the event any other claim for real estate commissions or compensation arises in connection with Buyer in this transaction, Buyer agrees to indemnify, defend, and hold harmless Seller from any loss or damage, including attorney fees incurred by Seller as a result of such claim.

All payments shall be made at the Borough Finance Office, P.O. Box 329, 12 S. Nordic Drive, Petersburg, Alaska in readily available funds.

If Buyer defaults, by failing to timely make the required deposit, timely subdivide the parcel or meet

any other contingency of sale, or timely pay the balance of the purchase price, any deposit made by Buyer shall be forfeited to Seller and Buyer shall have no further interest in or to the parcel, or right to purchase the parcel. This section is not intended to limit any other legal remedy available to Seller.

3. Contingency of Sale. The sale and conveyance of the parcel under this Agreement is contingent upon the following. A failure by Buyer to timely meet either of these contingencies is considered a default under this Agreement.

A. Subdivision of the parcel. Buyer shall, within 90 days of the effective date, submit an application and proposed plat to the Borough Planning Department, in accordance with Petersburg Municipal Code (PMC) Chapter 18.20, to legally create the parcel, and shall thereafter diligently pursue approval of the plat. Seller will sign the subdivision application, however Buyer is solely responsible for the performance of all other acts and filings required to properly subdivide the real property and create the parcel, and for payment of all fees and costs of subdivision, including surveying and engineering fees, borough platting fees, and recording fees. The plat must be finalized, approved by borough authorities, and recorded within one (1) year of the Effective Date of this Agreement, unless the Borough Assembly agrees to an extension, and such approval shall not be unreasonably withheld. If the plat is timely submitted, and review and consideration of the plat by the Borough Planning Department or Platting Board is unreasonably delayed, the period of such delay shall not be counted toward the one (1) year deadline.

B. Driveway Permit. Buyer shall, within one (1) year of the effective date of this Agreement, obtain a Driveway and Approach Road Permit from the Alaska Department of Transportation and Public Facilities to access the parcel directly from Haugen Drive, unless the Borough Assembly agrees to an extension, and such approval shall not be unreasonably withheld. Buyer understands and acknowledges that access to the parcel cannot be provided through the adjacent borough fire department facilities.

4. Rights of Seller Following Completion of Sale.

A. Right of Repurchase and Right of First Refusal. In the event that development of the project has not been completed with respect to the parcel within five (5) years from the effective date, Seller shall have the absolute right, but not the obligation, to repurchase the parcel, at Seller's sole discretion, for a price equal to the purchase price set out in Section 1 of this agreement, less ten percent (10%). Seller may exercise such right of the repurchase only by providing written notice to Buyer in accordance with Section 13 of this Agreement, no later than six (6) months after the expiration of such five (5) year period. Such notice shall state that the Seller is exercising its right of repurchase under this Section and shall specify a closing date for the repurchase, upon which Seller shall tender to Buyer the repurchase price in full. If Seller does not provide such written notice of its intent to exercise its repurchase right within said six (6) month period, Seller's right of repurchase under this section shall

expire. For purposes of this Agreement, project development will be considered to have been completed upon Buyer's performance of the tape drop and Buyer's reporting of that event and final completion of construction to the FAA and FCC. Buyer shall provide Seller with written verification confirming that these actions have been completed. If project development is not completed within such five (5) year period, any subsequent completion shall not impair Seller's right to exercise its right of repurchase during the six (6) month notice period set forth above.

In the event of Seller's exercise of its repurchase right and payment of the repurchase price at closing, Buyer relinquishes all right, title, and interest in and to the parcel, and fee simple title to the parcel shall automatically vest in Seller, free and clear of any right, claim, or interest of Buyer, without the necessity of further action by either party except that the Buyer is obligated to and shall execute and deliver to Seller at closing such instruments as may be reasonably required to effectuate conveyance and recordation of Seller's title in the parcel.

In addition to its right of repurchase, and in the event the Borough does not exercise such right, the Borough shall have the right of first refusal with respect to any subsequent sale of the parcel by Buyer. Prior to any such sale, Buyer shall provide the Borough with written notice of the terms and conditions of the proposed sale. The Borough shall have sixty (60) days from receipt of such notice to exercise its right to purchase the parcel on the same terms and conditions. Buyer shall not sell the parcel on terms more favorable to a third-party purchaser than those offered to the Borough. These provisions shall be recorded in the deed to be issued under paragraph 6 hereof.

B. Right of Installation. As a municipal government, Seller may in the future expand its police, fire and emergency response services beyond the current boundaries of Service Area 1 of the Borough, or may need additional equipment to adequately serve Service Area 1. Such expansion may create a need for Seller to place antennas and repeaters on Buyer's communication towers located within the Borough to support the necessary public-safety equipment. The parties agree that Seller may install, operate, maintain, repair and replace public-safety antennas, repeaters, and similar and necessary equipment on Buyer's towers and adjacent ground, at no cost to Buyer, and Seller shall not be charged any rental or other usage fee by Buyer. Seller shall be responsible for any electrical power consumption by Seller's equipment.

If such installation becomes necessary, the parties shall negotiate in good faith regarding the placement, technical specifications, and frequency use of the Seller's equipment; however, Seller's equipment shall not unreasonably interfere with Buyer's current or future operations. If at any time available capacity on a tower owned by Buyer is reduced to space sufficient for only one additional installation, Seller shall have the right of first refusal to occupy such remaining space. Buyer shall provide Seller with written notice of such availability, along with applicable terms and conditions (other than rental or usage fees, which shall not apply), and Seller shall have sixty (60) days from receipt of

notice to elect, in writing, to occupy the space. If the Seller does not timely exercise its right of first refusal, the Buyer may offer the remaining space to another party on terms not materially more favorable than those offered to the Borough. Seller shall be liable for any damage caused to Buyer's tower by Seller's installation of any public-safety antennas, repeaters, and similar equipment.

5. Parcel Sold in its Present Condition; Assumption and Presumption for Environmental Conditions. The parcel is sold "as is, where is", in its current condition and with all faults, known or unknown, as of the effective date. Buyer has entered into this Agreement relying solely upon information and knowledge obtained from Buyer's own investigation and/or inspection of the parcel. Seller expressly makes no representations regarding, and disclaims any liability for, the parcel, and any improvements located thereon, including without limitation (1) the condition of the parcel (including the existence of any hazardous or environmental conditions); (2) the existence or condition of any improvements located thereon; (3) the exact location or size of the parcel, the existence of markers on the parcel, or the ability or cost of surveying the parcel; (4) the status or insurability of title to the parcel, including the existence of any liens, encumbrances or conditions on the parcel; (5) the ability of Buyer to utilize the parcel or any improvements in any fashion and for any particular purpose or use; (6) any zoning of the parcel; and (7) the existence, or the potential for installation, of any utility or access on or to the parcel. The parcel is sold subject to all platted easements, rights-of-way and reservations, and all liens, encumbrances, and conditions, of record or not of record, including but not limited to matters which would have been disclosed by a survey or physical inspection of the parcel. Seller makes no representations, warranty or guarantees, express or implied, as to quality, merchantability or suitability of the parcel for a particular purpose or use. Closing of the purchase hereunder will constitute an acknowledgment by Buyer that Seller is relieved from any and all responsibility and liability for the condition of the parcel.

Additionally, Buyer assumes all risks for any adverse environmental conditions, past, present or future, existing on the parcel, including hazardous substances, waste and materials. Buyer agrees that should any subsequent cleanup, remediation or removal of hazardous substances, waste or materials be necessary due to environmental conditions or contamination occurring on or from the parcel, such clean-up, removal or remediation shall be the sole responsibility of, and shall be performed at the sole cost and expense of, Buyer and Buyer shall have no claim against the Seller.

6. Conveyance. Conveyance of the parcel to Buyer shall be by quitclaim deed, upon payment of the full purchase price. Seller is not obtaining title insurance for the parcel. If Buyer desires to obtain title insurance, Buyer may do so at Buyer's own expense.

7. Further Conditions of Sale. Seller and Buyer acknowledge the following conditions of sale apply to the project:

A. Fuel Tank. In connection with the operation of its communication tower, Buyer may

install a fuel tank to support its equipment and activities. The parties acknowledge and agree that any such fuel tank shall have a maximum capacity of two hundred (200) gallons and shall be designed, located, installed, and maintained in the configuration and manner depicted on Exhibit B. The fuel tank shall comply with all applicable federal, state, and local laws, regulations, and industry standards, including those governing the storage, handling, and containment of fuel. Any modification to the size, configuration, or location of the fuel tank shall require the Borough's prior written consent, which shall not be unreasonably withheld.

B. Development of parcel.

(i) The project shall be developed on the parcel in accordance with the plans attached hereto as Exhibit C. Any material change in development from that set out in Exhibit C, including placement of additional or different structures, or location of structures, shall require the Borough's prior written consent, which shall not be unreasonably withheld. In this provision, "material" includes any change that increases the tower height, expands the ground footprint from that provided for in Exhibit C, or alters the visual appearance or profile of the site from that provided for in Exhibit C.

Excepting material changes that require building official review under the Borough Code, and notwithstanding the provisions of the foregoing paragraph, Buyer shall not be required to obtain Seller's consent for: 1. The installation, modification, or replacement of antennas, microwave dishes, remote radio heads, cabling, or similar telecommunications equipment on the tower by Buyer or its tenants (provided the tower height does not exceed the maximum set forth in Section 7(D)); or 2. The placement of additional ground equipment shelters, cabinets, or generators within the fenced compound; provided, however, that all such equipment and installations shall be installed and maintained in compliance with applicable federal, state, and local safety standards, including but not limited to those established by the Federal Communications Commission (FCC).

(ii) Buyer shall design, engineer, and construct the communication tower to include one or more engineered breakpoints, intended to cause controlled structural failure at predetermined locations, to ensure that the tower does not fall onto a public roadway or critical borough infrastructure, including the adjacent borough fire department facilities. At the time of submission of its permit application to the Borough's Planning Department, Buyer shall include a certified engineered fall zone letter, stamped by a professional engineer licensed in the State of Alaska, verifying inclusion of the necessary breakpoints.

C. *Intentionally omitted.*

D. Maximum height of tower. The maximum height of the communication tower to be constructed on the parcel shall be One Hundred Thirty Feet (130'), inclusive of lightning rod.

E. No further communication towers on Mitkof Island. Buyer agrees that other than the

three communication towers described in Subsection 7(C) above, Buyer shall not, either by itself or in concert or coordination with others, install or construct any other or further communication towers, whether for broadband, cellular, or other communications technologies, on Mitkof Island, Alaska for five (5) years from the Effective Date without approval of the Petersburg Borough Assembly, which shall not be unreasonably withheld. Notwithstanding the foregoing, Buyer retains the right to repair, reinforce, or replace its three (3) towers on Mitkof Island at their current or planned locations, in accordance with the provisions of Subsection 7 hereof, provided such work does not result in a new tower in a wholly new location.

F. Disclosure of Construction Costs. Upon completion of construction of the tower contemplated by this Agreement, as well as any other tower constructed by Buyer within the Borough, Buyer shall provide to the Borough Finance Department its total cost of construction of the tower, including all labor, materials and equipment costs (“total costs of construction”), in order for the Borough to properly assess the tower for purposes of real property taxation under AS 29.45 and PMC 4.24. In the event that Buyer has previously constructed a tower within the Borough, the Buyer shall, upon the Effective Date, provide the total costs of construction for such existing tower(s).

G. Noninterference. The parties understand and acknowledge that the tower contemplated by this Agreement will be constructed on a parcel located immediately adjacent to the Borough’s fire department facilities, which house the Borough’s back-up 911 system and its fire, police, and emergency services radio system (“emergency systems”). Buyer shall not permit installation or operation of any equipment on the tower that causes interference with the emergency systems and shall, upon notice from the Borough of any such interference, promptly take all necessary actions to eliminate it.

The parties expressly acknowledge and agree that these conditions are essential and material terms of this agreement, form part of the bargained-for consideration, and are intrinsic to Seller’s willingness to enter into this Agreement, without which Seller would not have agreed to the sale.

8. Tower at Papke’s Landing. Buyer understands and acknowledges that there has been substantial community concern regarding its plans to install and construct a communication tower on Rory Road at Papke’s Landing. Buyer agrees to attempt, in good faith and using all reasonable means, to establish an alternative location for this tower, to move it away from residential structures.

9. Entire Agreement. This Contract of Sale is fully integrated and sets forth the entire understanding and agreement of the parties with respect to the purchase and sale of the parcel. This Agreement supersedes any and all prior negotiations, discussions, agreements, and understandings between the parties with respect to the subject matter hereof.

10. Amendment. This Contract of Sale may not be modified, amended or subjected to a novation

except by a written agreement executed and delivered by both Seller and Buyer.

11. Interpretation. Both Buyer and Seller have had an opportunity for independent counsel to review and modify the Contract of Sale. The rule of construction to the effect that any ambiguities are to be strictly construed against the drafter shall not apply to any interpretation of this agreement. The captions in this Contract of Sale are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this agreement or any of the provisions of this agreement.

12. Assignment. Buyer may not assign Buyer's rights, obligations or interest in this Contract of Sale to any other person or entity without first obtaining the prior written consent of Seller, to be granted at Seller's sole discretion.

13. Notices. Any notices or communications required or permitted to be given under this Agreement, including any written notice of termination of this agreement, shall be given in writing and shall be delivered (i) in person, (ii) by certified mail, postage prepaid, return receipt requested, or (iii) by electronic mail. Such notices shall be addressed as follows:

To Seller:
c/o Borough Manager
PO Box 329
Petersburg, Alaska 99833
Email: sgiesbrecht@petersburgak.gov

To Buyer:
c/o President
PO Box 25500
Juneau, Alaska 99802
Email: tidalmgnt@tlingitandhaida.gov

Any such notice or communication shall be considered given or delivered, as the case may be, on the date of personal delivery, three (3) days after deposit in the United States mail, or in the case of email transmission, upon the date sent, provided the party has proof of such sending. Rejection or other refusal to accept or inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of the notice or communication. Either party may at any time change its contact information by giving notice hereunder.

14. Severability. If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Agreement shall nonetheless remain in full force and effect so long as the intent of the parties can be reasonably accomplished thereby.

15. Governing Law/Waiver of Jury Trial. This Agreement shall be governed by, and construed in accordance with, the laws of the State of Alaska. The parties hereby waive any and all rights to a trial by jury in any action or proceeding brought in connection with this Agreement, and consent to the jurisdiction of the courts of the State of Alaska, located in Petersburg, Alaska. Buyer hereby agrees to a limited waiver of any sovereign immunity that it may possess to permit an action to be brought against it by the Borough in the State Courts of the State of Alaska to enforce the provisions of this

Agreement, as set forth in the Resolution attached hereto as Exhibit D. This limited waiver shall survive closing of this sale, to the extent necessary to enforce the provisions of this Agreement.

16. No Joint Venture; No Third-Party Beneficiaries. This Agreement shall not be construed or interpreted to create a partnership or joint venture between the parties. The provisions of this Agreement are and will be for the benefit of Seller and Buyer only and are not for the benefit of any third party. Accordingly, no third party shall have the right to enforce any provision of this Agreement.

17. Counterparts and Electronic Mail Signatures. This Agreement may be executed and delivered in one or more counterparts. Each such counterpart shall be deemed an original instrument, but all such counterparts together shall constitute one agreement. Signatures on documents forwarded by electronic mail are intended to be the equivalent of original signatures.

IN WITNESS WHEREOF the parties have hereunto executed this Agreement.

SELLER: Petersburg Borough

BUYER: Central Council of the Tlingit & Haida
Indian Tribes of Alaska, dba Tidal Network

By: Stephen Giesbrecht
Its: Borough Manager
Dated: _____

By: _____
Its: _____
Dated: _____