

**Mayor**

*Clay Koplin*

**Council Members**

*Tom Bailer*

*Kenneth Jones*

*Jeff Guard*

*Melina Meyer*

*Anne Schaefer*

*David Allison*

*David Glasen*

**City Manager**

*Alan Lanning*

**City Clerk**

*Susan Bourgeois*

**Deputy Clerk**

*Tina Hammer*

**Student Council**

*Summer vacation*

**Special City Council Meeting  
June 26, 2019 @ 12:00 pm  
Cordova Center Community Rooms  
Agenda**

**A. Call to order**

**B. Roll call**

Mayor Clay Koplin, Council members Tom Bailer, Ken Jones, Jeff Guard, Melina Meyer, Anne Schaefer, David Allison and David Glasen

**C. Approval of agenda..... (voice vote)**

**D. Disclosures of conflicts of interest**

**E. Communications by and petitions from visitors**

- 1. Audience Comments regarding agenda items

**F. New Business**

**2. Ordinance 1175..... (voice vote)(page 1)**

An ordinance of the City Council of the City of Cordova, Alaska, (i) declaring that tax-foreclosed property commonly known as the Cordova Hotel, located at 604 1st St, Cordova, AK 99574 and legally described as Lots Three (3) and Four (4), Block Six (6), Original Townsite of Cordova, Alaska, records of the Cordova recording district, Third Judicial District, State of Alaska (parcel no. 02-173-503), formerly owned by Dorene Wickham and deeded to the City by Clerk's Deed, is not required for a public purpose and (ii) authorizing and directing its sale and conveyance to the Cordova Telephone Cooperative, Inc. d/b/a Cordova Telecom Cooperative for \$52,000 - 1<sup>st</sup> reading

**G. Audience participation**

**H. Council comments**

**I. Adjournment**

**Executive Sessions: Subjects which may be discussed are:** (1) Matters the immediate knowledge of which would clearly have an adverse effect upon the finances of the government; (2) Subjects that tend to prejudice the reputation and character of any person; provided that the person may request a public discussion; (3) Matters which by law, municipal charter or code are required to be confidential; (4) Matters involving consideration of governmental records that by law are not subject to public disclosure.

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## AGENDA ITEM # 2

**City Council Meeting Date: 6/19/19**

CITYCOUNCILCOMMUNICATIONFORM

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**FROM:** Planning Staff  
**DATE:** 6/12/19  
**ITEM:** Ordinance 1175  
**NEXT STEP:** Approve Ordinance

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INFORMATION       RESOLUTION  
 MOTION             ORDINANCE

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**I. REQUEST OR ISSUE:**

Review and approve ordinance. Cordova Telecom Cooperative's (CTC) proposal is attached.

**II. RECOMMENDED ACTION / NEXT STEP:**

"I move to approve Ordinance 1175."

**III. FISCAL IMPACTS:**

The purchase price will reimburse the city for expenses of maintaining the building and delinquent property tax.

**IV. BACKGROUND INFORMATION:**

*12/11/18* – At the Planning Commission Regular Meeting, the commission recommended City Council dispose of the property by requesting sealed proposals. From the minutes of the meeting:

M/Bolin S/Lohse to recommend to City Council to dispose of Lots 3 & 4, Block 6, Original Townsite as outlined in Cordova Municipal Code 5.22.060 B by requesting sealed proposals to lease or purchase the property.

**Bolin** said that the property was costing city money for insurance, fuel, and manpower. He has heard of interest in the property. **Lohse** agreed that it should be disposed sooner rather than later. **Stavig** said that prior to the property being foreclosed and the determination of council that it did not serve a public purpose there had been interest in the property from multiple parties. **Pegau** said that there was a process that was being circumvented.

**Baenen** said that he wanted to just have it go to sealed bids. He understood that the money from the purchase goes to the original owner. **McGann** said that they have a land disposal criteria that weighs heavily towards the purchase price.

Upon voice vote, motion passed 5-1.

Yea: **McGann, Pegau, Bolin, Bird, Lohse**

Nay: **Baenen**

Absent: **Roemhildt**

**12/19/18** – At the City Council Regular Meeting, the council directed the City Manager to request sealed proposals. From the minutes of the meeting:

M/Schaefer S/Guard to dispose of Lots 3 & 4, Block 6, Original Townsite as outlined in Cordova Municipal Code 5.22.060 B by method 2. requesting sealed proposals to lease or purchase the property.

**Schaefer** said, just like what we said a minute ago – sell it. **Guard** said I am concurring with Planning Commission’s recommendation.

Vote on the motion: 7 yeas, 0 nays. Motion was approved.

**3/20/19** – At the Planning Commission Special Meeting, the commission recommended City Council approve the proposal from Cordova Telecom Cooperative. From the minutes of the meeting:

M/Roemhildt S/Bird to recommend City Council approve the proposal from Cordova Telecomm Cooperative for Lots 3 & 4, Block 6, Original Townsite.

**Roemhildt** said he thought the proposal was put together well. **Bird** agreed. She verified that the narrative about poor parking was at CEC’s current location. **Lohse** liked how well-written and easy to understand the proposal was. **Pegau** said he was happy that the building wasn’t going in the burn pile. He said it was useful to see what CTC thought the real cost to develop the lot would be.

**Lohse** said he was curious how the apartments in the building fit in with city planning. **Stavig** said that as far as the zoning went, residential uses are allowed. CTC will have to have a plan review through the State Fire Marshall and that will be a part of it. The Central Business District does not have parking requirements. **McGann** said that he was encouraged by some of the things that have come up at the Comprehensive Plan meetings that the proposal addresses.

**McGann** said each commissioner would submit their criteria to **Stavig** to keep as a part of the record, but they should each share their general thoughts related to the criteria. **Bird** said she liked the effort into meshing the building with the current architecture. She said she would have liked to see a higher purchase price, but with the cost of developing the lot, she understood why it wasn’t. **Lohse** agreed and said the proposal scored high in all the categories. **Roemhildt** said that he liked the apartments and the business component. He said that if there were other proposals with higher purchase prices, then it would have scored relative to the others. **Stavig** said, in regard to the purchase price, the city could only be reimbursed

for the delinquent property tax and costs to maintain the building. *Pegau* said he really liked the aesthetics, but it was just a relocation of an existing business. *McGann* said he was really encouraged with the intent to partner with Cordova Electric. *Bird* said she thought there was the potential to add new business with the incubation area.

Upon voice vote, motion passed 5-0.

Yea: *McGann, Pegau, Roemhildt, Bird, Lohse*

Absent: *Baenen, Bolin*

**4/3/19** – At the City Council Regular Meeting, the council considered the proposal from CTC and referred the agenda item back to staff due to potential conflicts. From the minutes of the meeting:

18. Council action on a proposal for Lots 3 & 4, Block 6, Original Townsite

*M/Bailer S/Glasen* to approve the proposal from Cordova Telecom Cooperative for Lots 3 & 4, Block 6, Original Townsite.

*Bailer* said it is a very strong plan and he will support it. *Glasen* echoed the comments, looks like a cool proposal. *Allison* agreed it is a good plan, CTC is a good corporate citizen in Cordova, they abide by their liabilities, he thinks it is a good option for them to take care of their facility. *Guard* is also enthusiastic about the plan. He wonders how this will affect us property tax exemption-wise.

After some discussion, including questions raised by City Attorney *Wells*, Council realized that several of them may have conflicts of interest with this due to spouses that were employed by CTC and/or spouses that were on the CTC Board of Directors. The maker of the motion with concurrence of the second withdrew the motion.

*M/Meyer S/Guard* to refer to staff to get a conclusive ruling on conflict of interest concerning council members.

Vote on the motion to refer: 3 yeas, 0 nays, 2 absent (Jones and Schaefer) 2 conflicts of interest (Bailer and Glasen). Motion was approved.

**4/17/19** – At the City Council Regular Meeting, council approved the proposal from CTC. From the minutes of the meeting:

18. Council action on a proposal for Lots 3 & 4, Block 6, Original Townsite

*M/Allison S/Meyer* to approve the proposal from Cordova Telecom Cooperative for Lots 3 & 4, Block 6, Original Townsite.

*Allison* said, same as he said last time, it is a good proposal, from a good corporate citizen who has the resources to do what they say they will do and at the same time it will relieve the City of a liability, he supports it. *Meyer* agrees and said it's a good proposal, she likes to see Main Street having a building rehabbed that has needed to be for a very long time, she is in support.

Vote on the motion: 6 yeas, 0 nays, 1 absent (Guard). Motion was approved.

## V. LEGAL ISSUES:

None; ordinance and Purchase and Sale Agreement have been reviewed by the city attorney.

## VI. CONFLICTS OR ENVIRONMENTAL ISSUES:

N/A

## VII. SUMMARY AND ALTERNATIVES:

City Council could choose to not pass ordinance.

**CITY OF CORDOVA  
ORDINANCE 1175**

**AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF CORDOVA, ALASKA, (I) DECLARING THAT TAX-FORECLOSED PROPERTY COMMONLY KNOWN AS THE CORDOVA HOTEL, LOCATED AT 604 1ST ST, CORDOVA, AK 99574 AND LEGALLY DESCRIBED AS LOTS THREE (3) AND FOUR (4), BLOCK SIX (6), ORIGINAL TOWNSITE OF CORDOVA, ALASKA, RECORDS OF THE CORDOVA RECORDING DISTRICT, THIRD JUDICIAL DISTRICT, STATE OF ALASKA (PARCEL NO. 02-173-503), FORMERLY OWNED BY DORENE WICKHAM AND DEEDED TO THE CITY BY CLERK'S DEED, IS NOT REQUIRED FOR A PUBLIC PURPOSE AND (II) AUTHORIZING AND DIRECTING ITS SALE AND CONVEYANCE TO THE CORDOVA TELEPHONE COOPERATIVE, INC. D/B/A CORDOVA TELECOM COOPERATIVE FOR \$52,000**

**WHEREAS**, the City of Cordova (the "City") received a deed (the "Deed") from the Clerk of the Court deeding to the City the Property defined and described below, which Property was formerly owned by Dorene Wickham ("Wickham"); and

**WHEREAS**, on September 24, 2018, the City recorded the Deed in the real property records of the Cordova Recording District as Document Number 2018-000301-0; and

**WHEREAS**, the City does not have an immediate public use for the Property; and

**WHEREAS**, the Property will not be needed or used by the City for a public purpose in the future and therefore is considered surplus to the needs of the City; and

**WHEREAS**, the City previously acted in accordance with Chapter 5.22 of the Cordova Municipal Code to issue a Request for Proposals (RFP) for Lots 3 & 4, Block 6, Original Townsite (COHO Buildings and Lots) (the "RFP") for the sale and development of the Property; and

**WHEREAS**, upon a review of all responses to the RFP and after due deliberation and consideration, and after consideration of the City of Cordova Planning Commission's (the "Planning Commission") recommendation, the City Council has determined it is in the City's best interest to sell and convey to the Property to the Cordova Telephone Cooperative, Inc. d/b/a Cordova Telecom Cooperative ("CTC") for the use specified by CTC in its proposal in response to the RFP; and

**WHEREAS**, the draft Purchase and Sale Agreement and Quitclaim Deed by and between the City and CTC are attached hereto; and

**WHEREAS**, the City Clerk has provided notice to Wickham of each reading of and the public hearing on this ordinance by certified mail as required by AS 29.45.460(c).

**BE IT ORDAINED** by the City Council of the City of Cordova, Alaska that:

**Section 1.** Form: This is a non-code ordinance.

**Section 2.** The City-owned tax foreclosed property commonly known as the Cordova Hotel, located at 604 1st St, Cordova, AK 99574 and legally described as

Lots Three (3) and Four (4), Block Six (6), Original Townsite of Cordova, Alaska, records of the Cordova Recording District, Third Judicial District, State of Alaska (Parcel No. 02-173-503) (the "Property")

is declared surplus, and not required for a public purpose.

**Section 3.** The City Manager is authorized and directed to enter into and perform under the Purchase and Sale Agreement, and to convey the Property to CTC under and pursuant to the Quitclaim Deed. The form and content of the Purchase and Sale Agreement and Quitclaim Deed now before this meeting hereby are in all respects authorized, approved and confirmed, and the City Manager hereby is authorized, empowered and directed to execute and deliver such documents on behalf of the City, in substantially the form and content now before this meeting but with such changes, modifications, additions and deletions therein as he shall deem necessary, desirable or appropriate, the execution thereof to constitute conclusive evidence of approval of any and all changes, modifications, additions or deletions therein from the form and content of said documents now before this meeting. From and after the execution and delivery of said documents, the City Manager hereby is authorized, empowered and directed to do all acts and things and to execute all documents as may be necessary to carry out and comply with the provisions of the documents as executed.

**Section 4.** The disposal of the Property authorized by this ordinance is subject to the requirements of City Charter Section 5-17; therefore, if one or more referendum petitions with signatures are properly filed within one month after the passage and publication of this ordinance, this ordinance shall not go into effect until the petition or petitions are finally found to be illegal and/or insufficient, or, if any such petition is found legal and sufficient, until the ordinance is approved at an election by a majority of the qualified voters voting on the question. If no referendum petition with signatures is filed, this ordinance shall go into effect one month after its passage and publication.

1st reading: June 26, 2019,  
2nd reading and public hearing:

**PASSED AND APPROVED THIS xx DAY OF xxxx 2019**

\_\_\_\_\_  
Clay R. Koplín, Mayor

ATTEST:

\_\_\_\_\_  
Susan Bourgeois, CMC, City Clerk

## DRAFT PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT (this "Agreement") is entered into as of \_\_\_\_\_, 2019 (the "Effective Date"), by and between the CITY OF CORDOVA, an Alaska municipal corporation ("Seller" or the "City"), whose address is P. O. Box 1210, Cordova, Alaska 99574, and CORDOVA TELEPHONE COOPERATIVE, INC. d/b/a CORDOVA TELECOM COOPERATIVE ("Purchaser"), whose address is P.O. Box 459, Cordova, Alaska 99574.

WHEREAS, Seller acquired through foreclosure certain real property located in the City of Cordova, Alaska, more particularly described in Exhibit A attached hereto and made a part hereof (the "Property"); and

WHEREAS, Purchaser has funds to pay the cost of acquiring the Property from Seller; and

WHEREAS, Purchaser desires to buy from Seller, and Seller desires to sell to Purchaser, the Property, subject to and in accordance with the terms and provisions hereinafter set forth.

NOW, THEREFORE, in consideration of the foregoing Recitals (which are incorporated herein by this reference), the mutual covenants and conditions hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree as follows:

**1. Purchase and Sale.** Seller hereby agrees to sell, assign and convey to Purchaser, and Purchaser hereby agrees to purchase from Seller, all of Seller's right, title and interest, if any, in and to that certain real Property located in the Cordova Recording District, Third Judicial District, State of Alaska, more particularly described in Exhibit A attached hereto and incorporated herein by this reference, together with any and all improvements thereon, and all rights, privileges, easements and appurtenances thereto (the "Property").

**2. The Purchase Price.** The purchase price for the Property is Fifty-Two Thousand and 00/100 Dollars (\$52,000.00) (the "Purchase Price") and shall be paid to Seller by Purchaser at the Closing (as that term is defined in Section 12 below) as follows:

(a) A Five Thousand Two Hundred and 00/100 Dollars (\$5,200.00) deposit received by Seller on May \_\_\_\_, 2019.

(b) An additional down payment of One Thousand and 00/100 Dollars (\$1,000.00) deposited with First American Title ("Title Company") upon execution of this Agreement.

(c) The balance of Forty-Five Thousand Eight Hundred and 00/100 Dollars (\$45,800.00), together with all costs incurred by the City in connection with the sale of the Property, including Closing Costs, payable at Closing.



### 3. Title.

(a) Seller shall order from the Title Company, and shall deliver to Purchaser within ten (10) days following the Opening of Escrow, a preliminary title report pertaining to the Property (the "Commitment"), together with legible (to the extent available) copies of all documents relating to the title exceptions referred to in such Commitment.

(b) Within fifteen (15) days after the delivery of the Commitment, Purchaser shall notify Seller in writing of any title exceptions identified in the Commitment of which Purchaser disapproves. Any exception not disapproved in writing within said fifteen (15) day period shall be deemed approved by Purchaser, and shall constitute a "Permitted Exception" hereunder. Purchaser and Seller hereby agree that all non-delinquent property taxes and assessments, mortgage(s) or Deeds of Trust of record, liens by the State of Alaska, or federal tax liens, shall also constitute "Permitted Exceptions." Within ten (10) days after receipt of Purchaser's written notice of disapproved title exceptions, if any, Seller shall notify Purchaser in writing of any disapproved title exceptions which Seller is unable or unwilling to cause to be removed prior to or at Closing. Seller's failure to give such notice shall be deemed an election not to remove any disapproved title exceptions. With respect to such exceptions, Purchaser then shall elect, by giving written notice to Seller and Escrow Agent within ten (10) days thereafter, (x) to terminate this Agreement, or (y) to waive his disapproval of such exceptions, in which case such exceptions shall then be deemed to be Permitted Exceptions. Purchaser's failure to give such notice shall be deemed an election to waive the disapproval of any such exception. In the event Purchaser elects to terminate this Agreement in accordance with clause (x) above, the Deposit, without interest, shall be immediately refunded to Purchaser; provided, however, that Purchaser shall be responsible for any title or escrow cancellation fees.

**4. Condition of Property:** Purchaser understands that Seller acquired the property by foreclosure, forfeiture, tax sale, or similar process. As a material part of the consideration to be received by the Seller under this Agreement as negotiated and agreed to by the Purchaser and Seller, the Purchaser acknowledges and agrees to accept the property IN ITS "AS IS" CONDITION at the time of closing, including, without limitation, any defects or environmental conditions affecting the Property, whether known or unknown, whether such defects or conditions were discoverable through inspection or not.

**5. No Warranties.** Purchaser shall purchase the Property based on Purchaser's own prior investigation and examination of the Property (or Purchaser's election not to do so). Purchaser agrees, represents, and warrants that except as expressly contained in this Agreement, no representations or warranties by or on behalf of Seller, express or implied, statutory or otherwise, are or have been made to the Purchaser as to the condition of the Property or improvements situated thereon, the contents thereof, any restrictions related to the development or use thereof, the applicability of any governmental requirements pertaining thereto, including but not limited to environmental requirements, the presence or absence of Hazardous Substances,



presence of groundwater, the suitability or fitness thereof for any use or purpose, the Property's compliance with federal, state and/or municipal laws, the location of any easements or other encumbrances, the condition of title to the Property, or any other matter or thing affecting or related to the Property in any way, and the Purchaser accepts the same IN AN "AS IS" PHYSICAL CONDITION AND IN AN "AS IS" STATE OF REPAIR, WITH ALL FAULTS. Purchaser hereby waives, and Seller does hereby disclaim, all warranties of any type or kind whatsoever with respect to the Property, whether express or implied, statutory or otherwise. Seller has agreed to sell the Property on the terms specified herein in reliance upon the foregoing limitations of Seller's liabilities, which are material to Seller, and Seller would not have entered into this Agreement without such limitations.

**6. Representations, Warranties and Covenants of Purchaser.** In addition to any other representations, warranties, and covenants contained herein, Purchaser represents and warrants to Seller that the following matters are true and correct as of the execution of this Agreement and also will be true and correct as of the Closing:

(a) This Agreement is, and all the documents executed by Purchaser which are to be delivered to Seller at the Closing will be, duly authorized, executed, and delivered by Purchaser, and is and will be legal, valid, and binding obligations of Purchaser enforceable against Purchaser in accordance with their respective terms and do not and will not violate any provisions of any agreement to which either Purchaser is a party or to which they are subject.

**7. Conditions Precedent to Closing.**

(a) The following shall be conditions precedent to Seller's obligation to consummate the purchase and sale transaction contemplated herein (the "Seller's Conditions Precedent"):

(1) Purchaser shall not have terminated this Agreement in accordance with Section 4, Section 14 or Section 15 of this Agreement within the time periods described in said Sections.

(2) Purchaser shall have delivered to Escrow Agent, prior to or at the Closing, for disbursement as directed hereunder, all cash or other immediately available funds due from Purchaser in accordance with this Agreement.

(3) There shall be no uncured breach of any of Purchaser's representations or warranties set forth in Section 7, as of the Closing.

(4) Purchaser shall have delivered to Escrow Agent the items described in Section 10.

(5) The timely performance by Purchaser of each and every obligation imposed upon Purchaser hereunder.

The conditions set forth in this Section 8(a) are solely for the benefit of Seller and may be waived only by Seller and only in writing. Seller shall, at all times have the right to waive any of these conditions.

(b) The following shall be conditions precedent to Purchaser's obligation to consummate the purchase and sale transaction contemplated herein (the "Purchaser's Conditions Precedent"):

(1) Purchaser shall not have terminated this Agreement in accordance with Section 4, Section 14 or Section 15 of this Agreement within the time periods described in said Sections.

(2) Title Company shall be committed to issue, at the Closing, an owner's policy of title insurance (the "Title Policy"), insuring Purchaser's interest in the Property, dated the day of the Closing, with liability in the amount of the Purchase Price, subject only to the Permitted Exceptions.

(3) Seller shall have delivered the items described in Section 9.

(4) The timely performance by Seller of each and every obligation imposed upon Seller hereunder.

The conditions set forth in this Section 8(b) are solely for the benefit of Purchaser and may be waived only by Purchaser and only in writing. Purchaser shall, at all times have the right to waive any of these conditions.

**8. Seller's Closing Deliveries.** At or prior to the Closing, Seller shall deliver to Escrow Agent the following:

(a) A Quitclaim Deed in the form attached hereto as Exhibit B, executed by Seller conveying the Property to Purchaser (the "Deed").

(b) A closing statement prepared by the Title Company itemizing and approving all receipts and disbursements made in connection with Closing.

(c) Any other documents, instruments or agreements reasonably necessary to effectuate the transaction contemplated by this Agreement.

**9. Purchaser's Closing Deliveries.** At or prior to the Closing, Purchaser shall deliver to Escrow Agent the following:

(a) The balance of the Purchase Price, together with such other sums as Escrow Agent shall require to pay Purchaser's share of the Closing costs, prorations, reimbursements and adjustments as set forth in Section 11 and Section 13, in immediately available funds.

(b) Any other documents, instruments or agreements reasonably necessary to effectuate the transaction contemplated by this Agreement.

**10. Prorations and Adjustments.** The following shall be prorated and adjusted between Seller and Purchaser as of the day of the Closing, except as otherwise specified:

(a) General real estate, personal property and ad valorem taxes and assessments, and any improvement or other bonds encumbering the Property, for the current tax year for the Property. Purchaser is not responsible for delinquent real estate taxes, personal property taxes, ad valorem taxes, or assessments arising prior to Closing.

(b) Utility charges, if any. Purchaser acknowledges and agrees that Seller shall be entitled to all refunds of utility deposits with respect to the Property and that such amounts are not to be assigned to Purchaser in connection with the sale of the Property. However, Purchaser will be responsible for any additional assessments effective prior to Closing, of which notice is received after Closing.

For purposes of calculating prorations, Purchaser shall be deemed to be in title to the Property, and, therefore entitled to the income therefrom and responsible for the expenses thereof for the entire day upon which the Closing occurs. All such prorations shall be made on the basis of the actual number of days of the month which shall have elapsed as of the day of the Closing and based upon the actual number of days in the month and a three hundred sixty-five (365) day year. In no event will there be any proration of insurance premiums under Seller's existing policies of insurance relating to the Property, and Purchaser acknowledges and agrees that none of Seller's insurance policies (or any proceeds payable thereunder) will be assigned to Purchaser at the Closing, and Purchaser shall be solely obligated to obtain any and all insurance that they deem necessary or desirable. The provisions of this Section 10 shall survive the Closing.

**11. Closing.** The purchase and sale contemplated herein shall close on or before sixty (60) days after the Effective Date (the "Closing") or on such other specific date and time mutually agreed to by the parties. As used herein, the term "Closing" means the date and time that the Deed is recorded in the Cordova Recording District, Third Judicial District, State of Alaska (the "Official Records"). The Closing shall occur at the offices of the Escrow Agent as set forth in Section 18(m).

**12. Closing Costs.** Purchaser shall pay the fee for recording the Deed, the premium for the Title Policy, and for all fees and costs Seller incurred to third parties in any way relating to the purchase and sale transaction involving the Property, including without limitation costs of appraisal, attorney's fees and costs, surveying and platting fees and costs, closing costs and escrow fees. Purchaser shall bear the expense of its own counsel. Unless otherwise specified herein, if the sale of the Property contemplated hereunder does not occur because of a default on the part of Purchaser, all escrow cancellation and title fees shall be paid by Purchaser; if the sale of the Property does not occur because of a default on the part of Seller, all escrow cancellation and title fees shall be paid by Seller.

**13. Risk of Loss.** If prior to the Closing, any portion of the Property is subject to a taking, or eminent domain proceedings are commenced, by public authority (other

than Seller) against all or any portion of the Property, Purchaser shall have the right, exercisable by giving notice to Seller within ten (10) business days after receiving written notice of such taking (but in any event prior to the Closing), either (i) to terminate this Agreement, in which case neither party shall have any further rights or obligations hereunder (except as may be expressly provided to the contrary elsewhere in this Agreement), and any money (including, without limitation, the Deposit and all interest accrued thereon) or documents in escrow shall be returned to the party depositing the same, and Purchaser and Seller each shall be responsible for one-half of any title or escrow cancellation fee, or (ii) to accept the Property in its then condition, without any abatement or reduction in the Purchase Price, and receive an assignment of all of Seller's rights to any condemnation award payable by reason of such taking. Purchaser's failure to elect timely shall be deemed an election of (ii). If Purchaser elects to proceed under clause (ii) above, Seller shall not compromise, settle or adjust any claims to such award without Purchaser's prior written consent. As used in this Section 14, "taking" shall mean any transfer of the Property or any portion thereof to a governmental entity (other than Seller) or other party with appropriate authority, by exercise of the power of eminent domain.

#### **14. Default.**

(a) No party shall be deemed to be in default hereunder unless such party fails to cure an alleged default within ten (10) days after receipt from the other party of written notice thereof; provided, however, that (i) if such alleged default is not susceptible of being cured within said ten (10) day period, such party shall not be deemed in default hereunder so long as such party commences to cure the alleged default within said ten (10) day period and diligently prosecutes the same to completion within thirty (30) days; and (ii) no notice shall be required or cure period permitted in the event the alleged default is a failure to close the transaction contemplated hereby at the Closing.

(b) In the event of a default by Seller hereunder, Purchaser's remedies shall be limited to, (i) terminating this Agreement by written notice to Seller, in which event the Deposit shall be returned to Purchaser and neither party shall have any further rights, obligations, or liabilities hereunder, or (ii) enforcing Seller's obligations hereunder by a suit for specific performance, in which event Purchaser shall be entitled to such injunctive relief as may be necessary to prevent Seller's disposition of the Property pending final judgment in such suit.

(c) In the event of a default by Purchaser hereunder, Seller shall be entitled, as Seller's sole and exclusive remedy, to terminate this Agreement by written notice to Purchaser, in which event, the Deposit shall be retained by Seller as liquidated damages; thereafter, neither party shall have any further rights, obligations, or liabilities hereunder. The parties acknowledge and agree that the actual damages in such event are uncertain in amount and difficult to ascertain, and that said amount of liquidated damages was reasonably determined.

## 15. Escrow.

(a) Instructions. Within five (5) business days after execution of this Agreement, Purchaser shall deposit a copy of this Agreement executed by both Purchaser and Seller with Escrow Agent. This Agreement, together with such further instructions, if any, as the parties shall provide to Escrow Agent by written agreement, shall constitute the escrow instructions. If any requirements relating to the duties or obligations of Escrow Agent hereunder are not acceptable to Escrow Agent, or if Escrow Agent requires additional instructions, the parties hereto agree to make such deletions, substitutions and additions hereto as Seller and Purchaser shall mutually approve, which additional instructions shall not substantially alter the terms of this Agreement unless otherwise expressly agreed to by Seller and Purchaser.

(b) Deposits into Escrow. Seller shall make its deliveries into escrow in accordance with Section 9. Purchaser shall make his deliveries into escrow in accordance with Section 10. Escrow Agent is hereby authorized to close the escrow only if and when: (i) Escrow Agent has received all items to be delivered by Seller and Purchaser pursuant to Sections 9 and 10; and (ii) Title Company can and will issue the Title Policy concurrently with the Closing.

(c) Close of Escrow. Provided that Escrow Agent shall not have received written notice in a timely manner from Purchaser or Seller of the failure of any condition to the Closing or of the termination of the escrow, and if and when Seller and Purchaser have deposited into escrow the matters required by this Agreement and Title Company can and will issue the Title Policy concurrently with the Closing, Escrow Agent shall:

(1) Deliver to Seller the Purchase Price, including all Closing Costs, after satisfying the prorations and adjustments to be paid by Seller pursuant to Section 11, if any.

(2) Deliver to Purchaser the Quitclaim Deed by causing it to be recorded in the Official Records of the Cordova Recording District, Third Judicial District, State of Alaska and immediately upon recording delivering to Purchaser a conformed copy of the Quitclaim Deed.

(3) Deliver to Purchaser any funds deposited by Purchaser, and any interest earned thereon, in excess of the amount required to be paid by Purchaser hereunder.

(4) Deliver the Title Policy issued by Title Company to Purchaser.

## 16. Indemnification.

(a) General Indemnification. Purchaser shall defend, indemnify, and hold the Seller and its authorized representatives, agents, officers, and employees harmless from and against any and all actions, suits, claims, demands, penalties, fines, judgments,



liabilities, settlements, damages, or other costs or expenses (including, without limitation, attorneys' fees, court costs, litigation expenses, and consultant and expert fees) resulting from, arising out of, or related in any way to the Property, the sale of the Property, or the contents of the Property, including claims relating to any personal property. This obligation shall survive closing.

(b) Environmental Release and Indemnification. The Seller makes no representation or warranty whatsoever, whether express, implied, or statutory, regarding the presence or absence of any Hazardous Material (as hereafter defined) on the Property. Purchaser releases the Seller and its authorized representatives, agents, officers, and employees from any and all actions, suits, claims, demands, penalties, fines, judgments, liabilities, settlements, damages, or other costs or expenses (including, without limitation, attorneys' fees, court costs, litigation expenses, and consultant and expert fees) that result from the presence, use, keeping, storage, or disposal of Hazardous Material in, on, or about the Property, or that arise out of or result from Purchaser's occupancy or use of the Property or the use or occupancy of the Property by Purchaser's employees, agents, servants, customers, contractors, subcontractors, sub-lessees, invitees (other than the City), or authorized representatives. This release includes, without limitation, any and all costs incurred due to any investigation of the Property or any cleanup, removal, or restoration mandated by a federal, state, or local agency or political subdivision, or by law or regulation. Purchaser agrees that it shall be fully liable for all costs and expenses related to the use, storage, and disposal of Hazardous Material generated, kept, or brought on the Property, whether by Purchaser, its employees, agents, servants, customers, contractors, subcontractors, sub-lessees, invitees, or authorized representatives, or any other party.

Purchaser shall defend, indemnify, and hold the Seller and its authorized representatives, agents, officers, and employees harmless from and against any and all claims, demands, penalties, fines, judgments, liabilities, settlements, damages, costs, or expenses (including, without limitation, attorneys' fees, court costs, litigation expenses, and consultant and expert fees) of whatever kind or nature, known or unknown, contingent or otherwise, arising in whole or in part from or in any way related to: (i) the presence, disposal, release, or threatened release of any such Hazardous Material on or from the Property, soil, water, ground water, vegetation, buildings, personal property, persons, animals, or otherwise; (ii) any personal injury or property damage arising out of or related to such Hazardous Material; (iii) any lawsuit brought or threatened, settlement reached, or government order relating to such Hazardous Material; and (iv) any violation of any laws applicable to such Hazardous Material.

As used in this Lease, "Hazardous Material" means any substance which is toxic, ignitable, reactive, or corrosive or which is regulated by any federal, state, or local law or regulation, as now in force or as may be amended from time to time, relating to the protection of human health or the environment, as well as any judgments, orders, injunctions, awards, decrees, covenants, conditions, or other restrictions or standards relating to the same. "Hazardous Material" includes any and all material or substances that are defined as "hazardous waste," "extremely hazardous waste," or a "hazardous substance" under any law or regulation.

This obligation shall survive closing.

## 17. General Provisions.

(a) Each individual executing this Agreement hereby represents and warrants that he or she has the capacity set forth on the signature pages hereof with full power and authority to bind the party on whose behalf he or she is executing this Agreement to the terms hereof.

(b) Time is of the essence in the performance of and compliance with each of the provisions and conditions of this Agreement. In the computation of any period of time provided for in this Agreement or by law, the day of the act or event from which such period of time runs shall be excluded, and the last day of such period shall be included, unless it is a Saturday, Sunday or legal holiday, in which case the period shall be deemed to run until the end of the next business day.

(c) Seller represents and warrants to Purchaser, and Purchaser represents and warrants to Seller, that there is no broker, finder, or other intermediary of any kind with whom such party has dealt in connection with the transaction contemplated hereby, and each party agrees to indemnify, defend, and hold harmless the other from any claim made by any broker or agent alleging entitlement to any fee or commission as a result of having dealt with the indemnifying party.

(d) This Agreement, including all exhibits attached hereto, constitutes the entire agreement and understanding of the parties with respect to the subject matter hereof, and there are no other prior or contemporaneous written or oral agreements, undertakings, promises, warranties, or covenants with respect thereto not contained herein.

(e) This Agreement may be amended or modified only by a written instrument executed by all of the parties hereto.

(f) No waiver of any condition or provision of this Agreement by any party shall be valid unless in writing signed by such party. No such waiver shall be deemed or construed as a waiver of any other or similar provision or of any future event, act, or default.

(g) If any provision of this Agreement is deemed unenforceable in whole or part, such provision shall be limited to the extent necessary to render the same valid or shall be deemed excised from this Agreement and replaced by a valid provision as close in meaning and intent as the excised provision, as circumstances require, and this Agreement shall be construed as if said provision had been incorporated herein as so limited or as so replaced, as the case may be.

(h) Headings of articles and sections herein are for convenience of reference only and shall not be construed as part of this Agreement.



(i) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, executors, administrators, successors, and permitted assigns.

(j) This Agreement shall be governed by and construed in accordance with the laws of the State of Alaska. Any dispute arising out of this Agreement shall be subject to litigation in the Superior Court for the State of Alaska, Third Judicial District at Anchorage.

(k) This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which, taken together, shall constitute a single instrument.

(l) In no event shall this Agreement be construed more strongly against any one person solely because such person or its representative acted as draftsman hereof, it being acknowledged by the parties hereto that both have been represented by competent legal counsel, that this Agreement has been subject to substantial negotiation, and that all parties have contributed substantially to the preparation of this Agreement.

(m) Any notice, request, demand, instruction or other document to be given or served hereunder or under any document or instrument executed pursuant hereto shall be in writing and shall be sent by United States registered or certified mail, return receipt requested, postage prepaid and addressed as follows:

Seller: City of Cordova  
Attn: City Manager  
P. O. Box 1210  
Cordova, Alaska 99574

With copy to:  
Holly Wells, Esq.  
Birch Horton Bittner & Cherot, PC  
510 L Street, Suite 700  
Anchorage, Alaska 99501

Purchaser: Cordova Telecom Cooperative  
PO Box 459  
Cordova, Alaska 99574

With copy to:  
John Andrew Leman  
Kempel, Huffman & Ellis, P.C.  
255 E. Fireweed Lane, Suite 200  
Anchorage, Alaska 99503

Escrow Agent: First American Title Insurance Company  
3035 C Street  
Anchorage, Alaska 99503

Title Company: First American Title Insurance Company  
3035 C Street  
Anchorage, Alaska 99503

Any party may change its address for notice by written notice given to the other in the manner provided in this Section. Any such communication, notice or demand shall be deemed to have been duly given or served on the date three (3) days after being placed in the U.S. Mail.

(n) The parties agree to execute such instructions to Escrow Agent and Title Company and such other instruments and to do such further acts as may be reasonably necessary to carry out the provisions of this Agreement on terms mutually acceptable to Purchaser and Seller.

(o) Notwithstanding anything to the contrary contained herein, this Agreement shall not be deemed or construed to make the parties hereto partners or joint venturers, or to render either party liable for any of the debts or obligations of the other, it being the intention of the parties to merely create the relationship of Seller and Purchaser with respect to the Property to be conveyed as contemplated hereby.

**18. Representations of Seller.** In addition to any other representations, contained herein, Seller represents to Purchaser that the following matters are true and correct as of the execution of this Agreement and also will be true and correct as of the Closing:

(a) This Agreement is, and all the documents executed by Seller which are to be delivered to Purchaser at the Closing will be, duly authorized, executed, and delivered by Seller and is and will be legal, valid, and binding obligations of Seller enforceable against Seller in accordance with their respective terms and do not and will not violate any provisions of any agreement to which either Seller is a party or to which they are subject.

(b) The foreclosure of the Property for non-payment of taxes was prosecuted in accordance with the requirements Alaska law.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their duly authorized representatives as of the date first above written.

SELLER: CITY OF CORDOVA

By: \_\_\_\_\_  
Alan Lanning, City Manager

STATE OF ALASKA )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Alan Lanning, City Manager of the CITY OF CORDOVA, an Alaska municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

PURCHASER: CORDOVA TELEPHONE COOPERATIVE, INC. d/b/a/  
CORDOVA TELECOM COOPERATIVE

By: \_\_\_\_\_  
Jeremiah Beckett, CEO

STATE OF ALASKA )  
 ) ss:  
THIRD JUDICIAL DISTRICT )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2019, by Jeremiah Beckett, CEO of Cordova Telephone Cooperative, Inc., d/b/a Cordova Telecom Cooperative.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_

**EXHIBIT A**

Legal Description of the Property

Lots Three (3) and Four (4), Block Six (6), ORIGINAL TOWNSITE OF CORDOVA, ALASKA, records of the Cordova Recording District, Third Judicial District, State of Alaska (Tax Parcel ID 02-173-503).

DRAFT

**EXHIBIT B**  
Quitclaim Deed

**CORDOVA RECORDING DISTRICT**

Recording requested by and  
after recording, return to:

Holly Wells  
Birch Horton Bittner & Cherot  
510 L Street, Suite 700  
Anchorage, AK 99501

**QUITCLAIM DEED**

The CITY OF CORDOVA, an Alaska municipal corporation, whose address is P. O. Box 1210, Cordova, Alaska 99574 ("Grantor"), for good and valuable consideration in hand paid, the adequacy and sufficiency of which is hereby acknowledged, conveys and quitclaims to CORDOVA TELEPHONE COOPERATIVE, INC. d/b/a CORDOVA TELECOM COOPERATIVE, whose address is P.O. Box 2575, Cordova, Alaska 99574, all interest which Grantor has, if any, in the following described real property:

Lots Three (3) and Four (4), Block Six (6), ORIGINAL TOWNSITE OF CORDOVA, ALASKA, records of the Cordova Recording District, Third Judicial District, State of Alaska (Tax Parcel ID 02-173-503).

DATED this \_\_\_ day of \_\_\_\_\_, 2019.

GRANTOR: CITY OF CORDOVA

\_\_\_\_\_  
Alan Lanning, City Manager

STATE OF ALASKA                    )  
  ) ss:  
THIRD JUDICIAL DISTRICT        )

The foregoing instrument was acknowledged before me this \_\_\_ day of \_\_\_\_\_, 2019, by Alan Lanning, City Manager of the City of Cordova, an Alaska municipal corporation, on behalf of the City.

\_\_\_\_\_  
Notary Public in and for Alaska  
My commission expires: \_\_\_\_\_