

## Legal Notice

The City of Needles has identified a certain city-owned property as surplus, and will undertake a sealed-bid auction for the sale of this property. The parcel is approximately 61.83 acres in size, and a bid of any size will be considered. The minimum bid is \$.92 per square foot. The parcel is located between Lillyhill Drive, Paseo Del Rey St., and San Clemente identified as APN 0185-234-26.

Sealed bids will be accepted at the Office of the City Clerk, 817 Third Street, Needles, California 92363, until 3:30 P.M. Pacific Standard time on October 13, 2020, at which time they will be publicly opened and read aloud. Each sealed bid shall be clearly marked on the outside of the envelope as follows: "Surplus Sales Bid". It is the responsibility of the bidder to see that any bid sent through the mail has sufficient time to be received by the City Clerk prior to bid opening time. Late bids will be returned to the bidder unopened. Fax and telephone bids will NOT be accepted.

The terms of the purchase, as well as information on the properties, is available via the City's website, [www.cityofneedles.com](http://www.cityofneedles.com). Questions can also be answered by the Planning Dept. at 760-326-2115 ext. 127.

The City reserves the right to amend the legal notice or to change the terms and conditions of the sealed bid auction by addendum at any time prior to the final bid submittal date.

The City reserves the right to reject any and all bids, for any reason, at the City's sole discretion, and to waive informalities and minor irregularities in any bid reviewed. The City may reject any bid that does not conform to the instructions provided in any legal notice or amended legal notice. Additionally, the City reserves the right to negotiate all final terms and conditions of any proposed bid received before entering into a final contract.

No bids will be accepted until the City has posted its bid package including its purchase agreement. To be complete, each bid must be submitted along with a copy of the completed purchase agreement.

**PURCHASE AGREEMENT AND  
JOINT ESCROW INSTRUCTIONS**

This AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_ 2020, by and between the CITY OF NEEDLES, a California charter city (*Seller*), and \_\_\_\_\_ (*Buyer*), for acquisition by Buyer of certain real property hereinafter described.

**RECITALS**

WHEREAS, Buyer desires to acquire all of Seller's right, interest, and title in and to Seller's real property and appurtenances thereto (*Property*), \_\_\_\_\_, Needles, California, and is further identified as San Bernardino County Assessor's Parcel No. \_\_\_\_\_ and legally described as shown in Exhibit A attached hereto and by this reference incorporated herein; and

WHEREAS, the sale will be on an as-is where-is basis; and

WHEREAS, Seller desires to sell to Buyer said Property subject to the conditions set forth in this Agreement.

NOW, THEREFORE, with reference to the foregoing Recitals which are incorporated herein by this reference, and for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Seller agrees to sell and Buyer agrees to purchase all of the Property described below under the terms and conditions of this Agreement.

**SECTION 1  
PURCHASE AND SALE**

1.1 Property; Agreement to Purchase Property. Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller that certain Property, together with any and all rights and privileges appurtenant to the Property, including all interests in surface and subsurface water and minerals, adjacent vacated streets and alleys, all in accordance with the terms, covenants and conditions set forth in this Agreement.

1.2 Purchase Price. The purchase price of the Property (*Purchase Price*) shall be the amount of \$ \_\_\_\_\_.

1.3 Payment. The Purchase Price will be paid by federal wire transfer to Escrow Agent of immediately available funds, in accordance with an estimated closing statement consistent with this Agreement, prepared by *Escrow Agent*, identified in Section 11.8.4 below, and executed by Buyer and Seller (*Closing Statement*).

Amount and Deposit of Earnest Money. On \_\_\_\_\_, 2017, Buyer deposited with Seller, together with an executed Deposit and Successful Bidder Agreement for the Purchase of City-Owned Property, attached hereto as Exhibit B and by this reference incorporated herein, an earnest money deposit in the amount of ten percent (10%) of the Purchase Price in the form of a check made payable to City of Needles (hereinafter the *Buyers Initial Deposit*). Thereafter, if Seller accepts Buyer's offer and Buyer and Seller sign this Agreement, Buyer shall submit an additional twenty percent (20%) of the Purchase Price by federal wire transfer of funds (the Buyer's Initial Deposit plus the additional 20% deposit shall be referred

to collectively as *Earnest Money*). However, Seller is not obligated to countersign this Agreement, and thereby accept Buyers offer submitted along with the Buyers Initial Deposit in the amount of ten percent (10%) of the Purchase Price. If Seller elects not to accept Buyers offer, it will return the check in the amount of ten percent (10%) of the Purchase Price to Buyer and the parties shall have no liability or obligation to one another. The Earnest Money shall be credited against that portion of the Purchase Price due at the final Closing. The Earnest Money shall be deposited in Escrow Agents non-interest bearing escrow/trust account pending disbursement pursuant to this Agreement.

**1.4 PROOF OF FUNDS, PRIOR TO EXECUTING THIS AGREEMENT, AND AS A CONDITION PRECEDENT TO ITS EFFECTIVENESS AND VALIDITY, BUYER SHALL PROVIDE DOCUMENTARY EVIDENCE SATISFACTORY TO Seller IN ITS SOLE AND ABSOLUTE DISCRETION THAT BUYER HAS FUNDS SUFFICIENT TO CLOSE ESCROW.**

## SECTION 2 ESCROW

2.1 Establishment of the Escrow. An escrow for this transaction (*Escrow*) shall be established with Escrow Agent, and Escrow Agent shall be engaged to administer the Escrow. The Escrow shall continue in effect until the earlier of the date that (a) Buyer has purchased the Property or (b) this Agreement terminates.

2.2 Opening and Closing of Escrow. Immediately after the execution of this Agreement by both Buyer and Seller, Seller will deliver a fully executed copy of this Agreement to Escrow Agent. The Closing of Escrow shall take place on the date Escrow Agent (i) is irrevocably committed to issue the Title Policy to Buyer pursuant to Section 5.3, and (ii) disburses proceeds of the sale to Seller in accordance with the approved Closing Statement and any Buyers Closing instructions. The date for the Closing (*Closing Date*) shall be on the tenth day after the expiration of the Due Diligence Period.

2.3 Acceptance of Escrow. By accepting this Escrow, Escrow Agent agrees to the terms of this Agreement solely as they relate to the duties of Escrow Agent.

2.4 Escrow Instructions. This Agreement constitutes escrow instructions to Escrow Agent. If Escrow Agent requires the execution of its standard form printed escrow instructions, Buyer and Seller agree to execute those instructions; however, those instructions will be construed as applying only to Escrow Agents engagement. If there are conflicts between the terms of this Agreement and the terms of the Escrow Agents standard form printed escrow instructions, the terms of this Agreement will control.

2.5 Buyers Closing Authorization. By accepting this Escrow, Escrow Agent acknowledges and agrees that the Closing shall not occur and Buyers funds shall not be disbursed from Escrow unless and until Escrow Agent receives a written authorization (which may be by facsimile or e-mail) from Buyer or Buyers counsel, stating that all Buyer requirements have been satisfied and authorizing the Closing and directing Escrow Agent to close Escrow and disburse Buyers Funds. Buyers counsel will provide such written authorization unless Seller is in default of its obligations hereunder required for the Closing.

2.6 Escrow Cancellation Charges. If Escrow fails to close because of Sellers default, Seller will pay all customary escrow cancellation charges. If Escrow fails to close because of Buyers default, Buyer will pay all customary escrow cancellation charges. If Escrow fails to close for any other reason, Seller and Buyer will each pay one-half (1/2) of all customary escrow cancellation charges.

### SECTION 3 INFORMATION TO BE PROVIDED TO BUYER

3.1 Seller Deliverables. Within five (5) days of the Effective Date, Seller shall provide, or cause to be provided to Buyer, the following (*Seller Deliverables*), at no cost to Buyer:

3.1.1 Preliminary Title Report. A current preliminary title report (the *Title Report*) for the Property prepared by Escrow Agent and copies of the current tax bills for the Property. The Title Report will show the status of title to the Property as of the date of the Title Report and will be accompanied by legible copies of all documents referred to in the Title Report.

3.1.2 Studies and Reports. Copies of all surveys, engineering plans and reports, site plans, architectural plans, drawings, test and inspection reports, environmental assessments, surveys, studies, and other materials in Seller's possession relating to the Property and any offsite improvements that serve or will serve the Property.

3.1.3 Other Agreements. Copies of any agreements, leases or contracts relating to the Property.

Seller will give Buyer written notice when Seller has furnished Buyer with all of the Seller Deliverables (*Deliverables Notice*). Except for Seller's express representations and warranties set forth in this Agreement, Seller's delivery of the Seller Deliverables shall be without any representation, warranty or recourse.

32 Material Changes in Information. Seller will report to Buyer in writing any material changes in any and all information furnished by Seller to Buyer pursuant to this Agreement, including without limitation, the Title Report and other Seller Deliverables which become known to Seller prior to Closing.

33 Retention or Return of Information. If the Closing does not occur and this Agreement is terminated, all copies of items furnished by Seller in accordance with Section 3.1 will be returned to Seller and Buyer shall deliver to Seller, upon Seller's request, copies of any and all environmental assessment reports and other environmental reports, soils reports, seismic and geologic reports, drainage studies and copies of all other studies, reports or tests related to the physical condition of the Property obtained by Buyer (*Buyers Studies*). Buyer's delivery of the Buyers Studies shall be without any representation, warranty or recourse. If the Closing occurs, all such materials shall be retained by Buyer.

### SECTION 4 MATTERS RELATING TO THE ESCROW PERIOD

4.1 Title and Survey Review.

4.1.1 Survey. Buyer may obtain an ALTA survey of the Property (the *Survey*) at no cost to Seller. In the event Buyer obtains an ALTA survey, Buyer shall deliver a copy of the Survey to Seller and Escrow Agent promptly following its receipt of the same.

4.1.2 Title Review; Cure. Buyer will have ten (10) days from the later of the Effective Date and its receipt of the Title Report (the *Title Review Period*) to approve or disapprove any title and survey matters disclosed by the Title Report. If Buyer is dissatisfied with any exception to title as

disclosed in the Title Report, in Buyer's sole and arbitrary discretion, then Buyer may, by giving notice to Seller and Escrow Agent within the Title Review Period (*Buyers Objection Notice*), either:

(a) Terminate this Agreement, in which case the Earnest Money shall be returned to Buyer; or

(b) Provisionally accept title subject to Seller's removal of any disapproved matters, exceptions or objections (the *Disapproved Items*), in which case Seller may, within five (5) days following receipt of Buyer's Objection Notice (the *Title Cure Period*), agree to remove some or all of the Disapproved Items prior to Closing or obtain endorsements to the Title Policy in form satisfactory to Buyer (in Buyer's sole and arbitrary discretion) insuring against the Disapproved Items, by giving Buyer written notice (*Sellers Cure Notice*) of the specific Disapproved Items which Seller agrees to so remove or endorse over (the *Cure Items*). If, during the Title Cure Period, Seller does not timely agree to remove or endorse over all of the Disapproved Items, then, at Buyer's election by written notice given within five (5) days following expiration of the Title Cure Period (i) this Agreement will be terminated and the Earnest Money refunded to Buyer, or (ii) Buyer may waive the Disapproved Items that Seller elected not to agree to remove or endorse over, and such matters shall be deemed Approved Title Exceptions, as defined in Section 4.1.2(d) below. If, within such 5-day period, Buyer fails to waive in writing the Disapproved Items that Seller elected not to agree to remove or endorse over, Buyer will be deemed to have elected to terminate this Agreement.

(c) Title to the Property will be conveyed to Buyer at the Closing subject only to the Approved Title Exceptions as defined below. Notwithstanding anything in this Agreement to the contrary, Seller agrees that title to the Property shall, at Closing, be free and clear of all monetary liens and encumbrances (other than the lien for current real property taxes and assessments not yet due and payable), including, but not limited to, any deeds of trust or mechanics liens, and all of such liens and encumbrances are hereby deemed to be Cure Items for the purposes of this Section 4.1, and Buyer need not give any Buyer's Objection Notice as to those items. Seller agrees that all such monetary liens and encumbrances, regardless of the amount, will be released from the Property by Seller at Seller's sole expense on or before the Closing, and Buyer shall have the right to pay, through Escrow, directly to the holder of any such lien or encumbrance any portion of the Purchase Price required in order to remove such lien or encumbrance.

(d) If Buyer does not (1) accept in writing the condition of title in whole, or (2) accept title provisionally as set forth in in section 4.1.2(b), as disclosed by the Title Report within the Title Review Period, the Title Report shall be deemed disapproved by Buyer and this Agreement shall automatically terminate, and upon such termination, the Earnest Money shall be returned to Buyer. For purposes of this Agreement *Approved Title Exceptions* means:

(i) non-delinquent real property taxes and assessments due and payable in the fiscal tax year in which the Closing occurs (which shall be prorated at Closing pursuant to Section 6.2.4 below);

(ii) those matters approved or deemed approved by Buyer in accordance with this Section 4.1 which are disclosed in the Title Report (other than the standard exceptions) and the Survey, if obtained by Buyer; and

(iii) any other matters approved by Buyer in writing.

(e) Any requirements specified in the Title Report for the issuance of the

Title Policy, together with any other requirements imposed by Escrow Agent on either or both Buyer or Seller for the issuance of the Title Policy, to the extent they are reasonable and customary in San Bernardino County, California, are referred to herein as the *Title Requirements*.

4.2 Buyers Right to Enter and Inspect the Property. From time to time following the Effective Date, Buyer and/or Buyers representatives, contractors, and agents may enter the Property to examine the Property, to conduct tests, inspections, studies, and other investigations of the Property, including, but not limited to, the Survey, environmental site assessment(s), geotechnical studies, soil tests, environmental studies, engineering feasibility studies, and other Buyers Studies.

4.2.1 Buyer Restoration and Indemnity. Buyer will restore any physical damage to the Property caused by Buyers Studies, and will indemnify, defend and hold harmless Seller and Sellers Related Parties (as defined in Section 11.1.5 below) for, from, and against any Claims, damages, liens, stop notices, liabilities, losses, costs and expenses, including reasonable attorneys fees and court costs caused by Buyers Studies (unless resulting from Sellers or its Related Parties negligent acts or omissions or willful misconduct) and this indemnity will survive the Closing or the termination of this Agreement. In addition Buyer and/or Buyer's representative will maintain comprehensive general liability insurance with coverage of at least one million dollars (\$1,000,000) per occurrence and provide a certificate of insurance showing Seller as an additional insured prior to entering the Property.

4.2.2 Investigation Contingency. **Buyer shall have until thirty (30) days after delivery of Sellers Deliverables Notice to complete the Buyers Studies and approve or disapprove the Property in Buyers sole and arbitrary discretion (time periods for approval or disapproval of the Title Report/Survey are governed by Section 4.1.2 ) (Due Diligence Period).** Buyers failure to timely approve or disapprove shall be deemed disapproval. If Buyer disapproves or is deemed to disapprove the Property, this Agreement shall automatically terminate, and upon such termination the Earnest Money shall be returned to Buyer.

## **SECTION 5 CLOSING DOCUMENTS; TITLE POLICY**

5.1 Sellers Closing Documents. On or before the Closing Date, Seller will deposit the following documents into the Escrow for delivery at the Closing, each of which will have been duly executed, endorsed and, where appropriate, acknowledged, and will be in form and substance reasonably satisfactory to Buyer, Buyers legal counsel and Escrow Agent:

5.1.1 Closing Statement. The estimated Closing Statement.

5.1.2 Grant Deed. A Grant Deed conveying the Property to Buyer, in the form attached as **Exhibit 3 C (Grant Deed)**.

5.1.3 FIRPTA Affidavit. An affidavit, signed and acknowledged by Seller under penalty of perjury, certifying that Seller is not a nonresident alien, foreign corporation, foreign partnership, foreign trust, foreign estate, or other foreign person within the meaning of Section 1445 and 7701 of the Internal Revenue Code of 1986 and the associated Treasury Regulations.

5.1.4 California Withholding Certificate. A duly executed California Franchise Tax Board (*FTB*) Form 593-C Withholding Certificate and such other documents required by Escrow Agent in order to comply with California withholding requirements.

5.1.5 Additional Documents. Such other documents as may be necessary, appropriate or reasonably required by Escrow Agent to transfer and convey the Property to Buyer and to otherwise close this transaction and issue the Title Policy to Buyer in accordance with the terms of this Agreement.

52 Buyers Closing Deliveries. On or before the Closing Date, Buyer will deposit into the Escrow the following funds and documents for delivery to Seller at the Closing, each of which, where appropriate, will have been duly executed and acknowledged and will be in form and substance satisfactory to Seller and Sellers legal counsel and Escrow Agent:

5.2.1 Closing Statement. The estimated Closing Statement.

5.2.2 Preliminary Change of Ownership Report. A Preliminary Change of Ownership Report as required by law.

5.2.3 Documentary Transfer Tax Affidavit. A Documentary Transfer Tax Affidavit as required by law.

5.2.4 Additional Documents. Such other documents as may be necessary, appropriate or reasonably required by Escrow Agent to close this transaction in accordance with the terms of this Agreement.

5.2.5 Buyers Closing Funds. The Purchase Price, less the Earnest Money, plus Buyers Closing costs in accordance with the approved Closing Statement, will be paid at Closing by federal wire transfer to Escrow Agent in immediately available funds.

53 Title Policy. Closing is contingent upon Escrow Agents issuance of the Title Policy. Seller, at Sellers expense, will satisfy all of Escrow Agents Title Requirements (as defined in 4.1.2(e) above) for issuance of the Title Policy other than those, if any, within Buyers control or those which Buyer is obligated to satisfy under this Agreement. Buyer, at Buyers expense, will satisfy all of Escrow Agents Title Requirements for issuance of the Title Policy other than those, if any, within Sellers control or those which Seller is obligated to satisfy under this Agreement.

## **SECTION 6 CLOSING THE TRANSACTION**

61 Closing Deadline. The Closing shall occur on or before the Closing Date.

62 Closing Costs and Prorations.

6.2.1 Escrow Fees. Seller and Buyer will each pay one-half (1/2) of the Escrow fees.

6.2.2 Title Insurance Fees. Seller will pay for the Title Report and the premium for a ALTA standard coverage owners Title Policy and Buyer shall pay the portion of the Title Policy premium attributable to upgrading to ALTA extended coverage, the cost of any endorsements, if requested by Buyer and provided the closing is not delayed as a result.

6.2.3 Recording Fees. Seller will pay the recording fees for recording the Grant Deed, the documentary transfer tax and any County or City transfer tax, and all title clearance costs to remove liens, encumbrances or other title matters which are Sellers responsibility.

6.2.4 Prorations. Seller is responsible for paying all taxes, assessments, fees, and other charges for years prior to the year of Closing and any supplemental taxes attributable to periods prior to Closing. All such items due and payable in the year of the Closing will be prorated in Escrow as of Closing, based upon the most current information then available to Escrow Agent. If, at the Closing, actual tax or assessment information is not available, then, following the Closing and within thirty (30) days of receipt by either Buyer or Seller of the actual tax or assessment information, Buyer and Seller will re-prorate real estate taxes and assessments among themselves and make any necessary adjusting payments.

6.2.5 Miscellaneous Closing Costs. Any other closing costs not otherwise expressly provided for in this Agreement will be paid by Buyer and Seller as they shall mutually agree or, in the absence of such agreement, according to the usual and customary practice in San Bernardino County, California.

6.3 Payments and Disbursements to Be Handled through the Escrow. The various charges, credits and prorations contemplated by this Agreement will be handled by Escrow Agent through the Escrow by appropriate charges and credits to Buyer and Seller. All amounts payable at Closing pursuant to this Agreement will be paid to Escrow Agent for disposition through the Escrow. Escrow Agent is authorized to date documents as instructed by this Agreement and to make all disbursements to the parties and to third parties contemplated by this Agreement from funds deposited for those purposes, as necessary or appropriate to close this transaction. If Seller's net proceeds are to be disbursed by federal wire transfer, Seller shall exercise reasonable efforts to provide Buyer and Escrow Agent with written evidence issued by the depository bank that the account into which Seller's funds are to be wire transferred is owned by Seller and reported by the depository bank under the same federal tax identification number specified for Seller in the FIRPTA affidavit furnished pursuant to Section 5.1.3 above.

6.4 Seller's Obligation to Deposit Additional Funds. Seller hereby authorizes Escrow Agent to use so much of proceeds otherwise payable to Seller at Closing as is necessary to pay all costs and other amounts payable by or otherwise chargeable to Seller pursuant to this Agreement.

6.5 Buyer's Obligation to Deposit Additional Funds. On or before the Closing Date, Buyer will deposit with Escrow Agent cash in an amount sufficient to pay all costs and other amounts payable by or otherwise chargeable to Buyer pursuant to this Agreement.

6.6 IRS and FTB Reporting at Closing. Escrow Agent agrees to be the designated reporting person under §6045(e) of the U.S. Internal Revenue Code and applicable provisions of the California Revenue and Taxation Code with respect to the real estate transactions described in this Agreement, and to prepare, file and deliver such information, returns and statements as the U.S. Treasury Department and FTB may require by regulations or forms in connection therewith, including Form 1099-B and, if applicable, FTB Form 593.

## **SECTION 7 ADDITIONAL COVENANTS**

7.1 Possession. At the Closing, Seller shall deliver possession of the Property to Buyer.

7.2 Risk of Loss. Except as to any matter caused by the act, omission, negligence or willful misconduct of a party hereunder, in which cases such party shall be responsible; except as provided in Section 4.2 and Section 7.5; and subject to the express indemnities contained in this Agreement with



respect to the Property, the risk of loss or damage to the Property and all liability to a Third Party will be with the party that owns fee simple title to the Property at the time the loss, damage or liability is suffered or incurred. In the event of loss or damage to the Property prior to the Closing, the parties agree that if such loss is greater than fifty thousand dollars (\$50,000.), Buyer shall have the right, but not the obligation, to terminate this Agreement in which event Buyer shall be entitled to a return of its Earnest Money. In the event the loss or damage to Property is less than fifty thousand dollars (\$50,000.), Seller may repair the damage prior to the Closing. In the event Seller does not make the repairs to Buyer's reasonable satisfaction, Buyer shall be entitled to a reduction in the purchase price or an assignment of insurance proceeds, if any, in an amount equal to the loss or damage.

7.3 Condemnation. If all or any portion of the Property is condemned (or sold and conveyed in lieu of condemnation) prior to the Closing or if such a condemnation proceeding is commenced or threatened prior to Closing, Seller shall notify Buyer in writing (a *Condemnation Notice*) and Buyer may terminate this Agreement by giving written notice of termination to Seller within ten (10) days following receipt of a Condemnation Notice. If Buyer elects to terminate pursuant to this Section 7.3 the Earnest Money will be returned to Buyer and the Agreement will be canceled. If Buyer does not elect to terminate pursuant to this Section then (i) this Agreement shall continue in effect, (ii) Seller shall not settle or compromise any condemnation or convey any portion of the Property in lieu of condemnation without Buyer's prior written consent, (iii) if Closing occurs Buyer will receive all awards or payments made by the condemning authority to which Seller would otherwise be entitled and (iv) to the extent Seller receives an award with respect to the Property prior to Closing, Seller shall pay the entire award to Escrow Agent to be held in Escrow pending (i) the Closing, in which case the award shall be credited against the Purchase Price due at Closing, or (ii) termination of this Agreement for any other reason, in which case the award shall be disbursed to Seller.

7.4 Brokerage. Buyer and Seller each represent and warrant that they have not engaged the services of any broker, agent or other Person entitled to receive a commission, finders fee or other such compensation in connection with the execution of this Agreement or the consummation of the transactions contemplated by this Agreement. If any Person asserts a claim to a finders fee, brokerage commission or other compensation on account of alleged employment as a finder or broker or performance of services as a finder or broker in connection with this transaction, the party under whom the finder or broker is claiming will indemnify, defend and hold the other party and the other party's Related Parties harmless for, from, and against any Claims related thereto. This indemnity will survive the Closing or the termination of this Agreement.

7.5 General Indemnity. Subject to the limitations on survival of representations and warranties contained in Sections 8.1 and 9.1, each party to this Agreement agrees to indemnify, defend and hold harmless each other party and that party's Related Parties for, from and against all Claims caused by the breach by such indemnifying party of any obligation under this Agreement or the inaccuracy of any representation or warranty made by such indemnifying party in this Agreement or in any instrument delivered pursuant to this Agreement or in connection with the transactions contemplated by this Agreement.

7.6 Property Sold As Is.

7.6.1 Limitation of Seller Representations and Warranties. Except for Seller's express representations and warranties set forth in this Agreement, Seller hereby specifically disclaims any warranty (oral or written) concerning: (i) the nature and condition of the Property and the suitability thereof for any and all activities and uses that Buyer elects to conduct thereon; (ii) the manner, construction, condition and state of repair or lack of repair of any improvements on the Property; (iii) the

compliance of the Property with any laws, rules, ordinances or regulations of any government or other body; and (iv) the content or accuracy of any documents or materials delivered by Seller to Buyer. Buyer is relying solely upon, and will have conducted, its own, independent inspection, investigation and analysis of the Property as it deems necessary or appropriate in so acquiring the Property from Seller, including, without limitation, an analysis of any and all matters concerning the condition of the Property and its suitability for Buyers intended purposes, and a review of all applicable laws, ordinances, rules and governmental regulations (including, but not limited to, those relative to building, zoning and land use) affecting the development, use, occupancy or enjoyment of the Property. *Except for Sellers express representations and warranties set forth in this Agreement* (i) the sale of the Property is made on a strictly AS IS, WHERE IS, WITH ALL FAULTS basis as of the date of Closing, and (ii) Seller makes no warranty or representation, express or implied, or arising by operation of law, including, but in no way limited to, any warranty of quantity, quality, condition, habitability, merchantability, suitability or fitness for a particular purpose of the Property, any improvements located thereon or any soil or environmental conditions related thereto.

**7.6.2 Buyer Waiver and Release.** Buyer specifically acknowledges that Buyer is not relying on (and Seller hereby disclaims and renounces) any representations or warranties made by or on behalf of Seller of any kind or nature whatsoever, *except for those particular representations and warranties expressly provided in this Agreement. Except for Claims related to breach of Sellers express representations and warranties in this Agreement.* Buyer, for Buyer and Buyers successors and assigns, hereby releases Seller from, and waives any and all Claims and liabilities against Seller for, related to, or in connection with, any environmental or physical condition at the Property (or the presence of any matter or substance relating to the environmental condition of the Property), including, but not limited to, Claims and/or liabilities relating to (in any manner whatsoever) any Hazardous Substances, toxic or dangerous materials or substances located in, at, about or under the Property, or for any and all Claims or causes of action (actual or threatened) based upon, in connection with, or arising out of any Environmental Law, or any other claim or cause of action including any federal or state based statutory, regulatory or common law cause of action related to environmental matters or liability with respect to, or affecting, the Property. Buyer represents to Seller that Buyer has conducted, or will conduct prior to Closing, such investigations of the Property, including but not limited to, the physical and environmental conditions thereof, as Buyer deems necessary to satisfy itself as to the condition of the Property and the existence or nonexistence of, or curative action to be taken with respect to, any Hazardous Substances or toxic substances on or discharged from the Property, and will rely solely upon same and not upon any information provided by, or on behalf of, Seller, its agents and employees with respect thereto, other than such representations and warranties of Seller as are expressly set forth in this Agreement.

**7.6.3 Buyers Development Covenants.** Buyer and Seller agree that the covenants in this Section 7.6.3 are a material part of the consideration to Seller under this Agreement and that Seller would not have entered into this Agreement were it not for the covenants and agreements in this Section 7.6.3 as also reflected in the Grant Deed. Buyer agrees to submit its plan for the development and construction of its project on the Property (Entitlements) before the expiration of the Due Diligence Period subject to the review and approval of the City. Notwithstanding anything to the contrary, City shall review the Entitlement applications in good faith, but shall have no obligation to approve Buyers Entitlement applications. If Buyer has made good faith, timely, material and substantial progress towards obtaining the Entitlements prior to the expiration of the Due Diligence Period, Seller may agree to extend the Due Diligence Period by an additional 30 days, but City shall have no obligation to approve such extension or any additional extensions. Buyer releases City from any liability in connection with the approval or disapproval of the proposed Entitlements as provided in Section 7.6.2. Buyer shall complete the improvements provided for in the Entitlements and obtain a Certificate of Occupancy within 24 months after the Closing (the

Project) subject to all applicable laws and ordinances. Buyer may not transfer fee title or any other interest in the Property prior to obtaining a Certificate of Occupancy for the Project. If Buyer undergoes a change in control, whereby majority of the shares, partnership interests or membership interests in Buyer are transferred, the same shall be treated as a transfer of fee title for purposes of this Agreement. This Section 6.7.3 and Section 11 shall survive the Close of Escrow.

## SECTION 8 Sellers REPRESENTATIONS AND WARRANTIES

81 Nature of Seller's Representations. Each of the representations and warranties of Seller contained in this Agreement constitutes a material part of the consideration to Buyer and Buyer is relying on the correctness and completeness of these representations and warranties in entering into this transaction. Each of the representations and warranties is true and accurate as of the date of execution of this Agreement by Seller, will be true and accurate as of Closing, and will survive the Closing and shall not merge into the Deed. Buyer's written notice of Claim for breach of warranty must be given to Seller within one (1) year after Closing or the breach of warranty Claim shall be barred. If any representation or warranty made by Seller is untrue or inaccurate in any material respect and Buyer becomes aware of such untruth or inaccuracy prior to Closing, Buyer may elect in its sole and arbitrary discretion and as its sole remedy for such occurrence, either to (i) terminate this Agreement by delivery of written notice to Seller prior to the Closing, whereupon the Earnest Money will be returned to Buyer and this Agreement will be terminated; or (ii) proceed with the Closing and accept the untruth or inaccuracy, in which case Buyer shall not be entitled to commence any action or pursue any other remedy against Seller after Closing due to said representation or warranty being untrue or inaccurate.

82 Representations and Warranties as to Seller and the Transaction. Seller represents and warrants to Buyer as follows:

8.2.1 Seller Authority. Seller is a municipal corporation, validly existing under the laws of the State of California, and has full power and authority to enter into and to perform its obligations under this Agreement. The persons executing this Agreement on behalf of Seller have full power and authority to do so and to perform every act and to execute and deliver every document and instrument necessary or appropriate to consummate the transactions contemplated by this Agreement. Seller has all necessary power and authority to own its properties and to conduct its business as now owned and conducted by Seller.

8.2.2 Entity Action. All organizational action on the part of Seller which is required for the execution, delivery and performance by Seller of this Agreement and each of the documents and agreements to be delivered by Seller at Closing has been duly and effectively taken.

83 Representations and Warranties Relating to the Property. Except as disclosed by the Agreement or by the Seller Deliverables furnished pursuant to SECTION 3, Seller represents and warrants to Buyer as follows:

### 8.3.1 Environmental Representations.

(a) To the best of Seller's knowledge, (i) the Property is free from Hazardous Substances, (ii) Seller has not caused or allowed the use, generation, manufacture, production, treatment, storage, release, discharge, or disposal of any Hazardous Substances on, under, or about the Property, and has not caused or allowed the transportation to or from the Property of any Hazardous Substance in violation of any Environmental Law (as defined in Section 11.1.2 below), and (iii) to the

best of Sellers knowledge, the Property is not now and has never been in violation of any Environmental Law.

(b) To the best of Sellers knowledge, there are not now buried or partially buried storage tanks located on the Property.

(c) Seller has received no warning, notice of violation, administrative complaint, judicial complaint, or other formal or informal notice alleging that conditions on the Property or adjacent property are or have been in violation of any Environmental Law, or informing Seller that the Property is subject to investigation or inquiry regarding the presence of Hazardous Substances on or about the Property or the potential violation of any Environmental Law.

## **SECTION 9**

### **Buyers REPRESENTATIONS AND WARRANTIES**

9.1 Nature of Buyers Representations. Each of the representations and warranties of Buyer contained in this Section 9 constitutes a material part of the consideration to Seller and Seller is relying on the correctness and completeness of these representations and warranties in entering into this transaction. Each of the representations and warranties is true and accurate as of the date of execution of this Agreement by Buyer, will be true and accurate as of each Closing, and will survive each Closing. Sellers written notice of Claim for breach of warranty must be given to Buyer within two (2) years after the final Closing or the breach of warranty Claim shall be barred.

9.2 Representations and Warranties as to Buyer and the Transaction. Buyer represents and warrants to Seller as follows:

9.2.1 Organizational Status. Buyer is a California corporation/partnership/llc (circle one), validly existing and in good standing under the laws of the State of California, or, an individual, and has full power and authority to enter into and to perform its obligations under this Agreement. The persons executing this Agreement on behalf of Buyer have full power and authority to do so and to perform every act and to execute and deliver every document and instrument necessary or appropriate to consummate the transactions contemplated by this Agreement. Buyer has all necessary power and authority to own its properties and to conduct its business as now owned and conducted by Buyer.

9.2.2 Entity Action. All organizational action on the part of Buyer which is required for the execution, delivery and performance by Buyer of this Agreement and each of the documents and agreements to be delivered by Buyer at each Closing has been duly and effectively taken.

9.2.3 Enforceable Nature of Agreement. This Agreement and each of the documents and agreements to be delivered by Buyer at each Closing, constitute legal, valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, except to the extent that enforceability may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, moratorium, or similar laws affecting the enforcement of creditors rights generally, and subject, as to enforceability, to general principles of equity (regardless of whether enforcement is sought in a court of law or equity).

9.2.4 Violations; Consents; Defaults. To the best of Buyers knowledge, neither the execution of this Agreement nor the performance by Buyer of its obligations under this Agreement will result in any breach or violation of the terms of any law, rule, ordinance, or regulation or of any decree, judgment or order in effect from any court or governmental body which is binding on Buyer or any

officer, or director of Buyer. There are no consents, waivers, authorizations or approvals from any Third Party or Buyers Related Parties necessary to be obtained by Buyer in order to carry out the transactions contemplated by this Agreement. The execution and delivery of this Agreement and performance by Buyer of its obligations under this Agreement will not conflict with or result in a breach or default (or constitute an event which, with the giving of notice or the passage of time, or both, would constitute a default) under Buyer's articles or Bylaws or any indenture, mortgage, lease, agreement, or other instrument to which Buyer is a party or by which Buyer or any of its assets may be bound.

## **SECTION 10 REMEDIES**

10.1 Sellers Remedies. If the Closing does not occur due to any material default by Buyer, then Seller shall provide Buyer and Escrow Agent with written notice specifying the nature of Buyer's Default. If Buyer has not cured the default within five (5) days after receipt of Seller's notice, then so long as Seller is not in default hereunder, Seller shall have the right as Seller's sole and exclusive remedy to terminate this Agreement by giving written notice of cancellation to Buyer and Escrow Agent and to receive the Earnest Money.

**BUYER AND SELLER HEREBY AGREE THAT IF SELLER TERMINATES THIS AGREEMENT DUE TO BUYERS MATERIAL DEFAULT, THEN IN SUCH EVENT THE EXACT AMOUNT OF SELLERS DAMAGES WOULD BE EXTREMELY DIFFICULT TO ASCERTAIN AND THEREFORE THE EARNEST MONEY DEPOSITED INTO ESCROW SHALL BE DEEMED TO CONSTITUTE A REASONABLE ESTIMATE OF SELLERS DAMAGES UNDER THE PROVISIONS OF SECTION 1671 OF THE CALIFORNIA CIVIL CODE AND SELLERS SOLE AND EXCLUSIVE REMEDY IN THE EVENT OF BUYERS DEFAULT SHALL BE LIMITED TO TERMINATION OF THIS AGREEMENT AND COLLECTION OF SUCH LIQUIDATED DAMAGES.**

**BUYERS INITIALS:** \_\_\_\_\_ **SELLERS INITIALS:** \_\_\_\_\_

10.2 Buyer's Remedies. If Seller fails to perform when due any act required by this Agreement to be performed or otherwise breaches this Agreement and such failure or breach continues for a period of five (5) days after Seller receives written notice thereof, then, in addition to whatever other remedies are available to Buyer at law or in equity, including the right to have specific performance of this Agreement, Buyer may terminate this Agreement and the Escrow, such cancellation to be effective immediately upon Buyer giving written notice of cancellation to Seller and Escrow Agent, and the Earnest Money shall be returned to Buyer.

## **SECTION 11 GENERAL PROVISIONS**

11.1 Certain Definitions. As used in this Agreement, certain capitalized terms are defined as follows:

11.1.1 Claims means any and all obligations, debts, covenants, conditions, representations, costs, and liabilities and any and all demands, causes of action, and claims, of every type, kind, nature or character, direct or indirect, known or unknown, absolute or contingent, determined or speculative, at law, in equity or otherwise, including attorneys fees and litigation and court costs.

11.1.2 Environmental Law means any federal, state or local law, statute, ordinance, or

regulation pertaining to health, industrial hygiene, or environmental conditions, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. §§ 9601, et seq.; the Resource Conservation and Recovery Act of 1976, 42 U.S.C. §§ 6901, et seq.; the Toxic Substances Control Act of 1976, 15 U.S.C. §§ 2601, et seq.; the Superfund Amendments and Reauthorization Act of 1986, Title III, 42 U.S.C. §§ 11001, et seq.; the Hazardous Materials Transportation Act, 49 U.S.C. §§ 1801, et seq.; the Clean Air Act, 42 U.S.C. §§ 7401, et seq.; the Federal Water Pollution Control Act, 33 U.S.C. §§ 1251, et seq.; the Safe Drinking Water Act, 42 U.S.C. §§ 300f, et seq.; the Solid Waste Disposal Act, 42 U.S.C. §§ 3251, et seq.; California Health and Safety Code Sections 25100, et seq.; the Safe Drinking Water and Toxic Enforcement Act of 1986, California Health and Safety Code Sections 25249.5, et seq.; the Porter-Cologne Water Quality Control Act, California Water Code Section 13000, et seq.; California Civil Code Section 3479, et seq.; Hazardous Substance Account Act, California Health and Safety Code Sections 25330, et seq.; California Health and Safety Code Sections 25280, et seq.; California Hazardous Waste Management Act, California Health and Safety Code Sections 25500, et seq., all as amended and supplemented and the provisions of any other federal, state or local law, statute, ordinance, or regulation now in effect or hereafter enacted or promulgated which pertains to health, industrial hygiene, or the regulation or protection of the environment, including, without limitation, ambient air, soil, groundwater, surface water, and/or land use.

11.1.3 Hazardous Substance means any material, waste, substance, pollutant, or contaminant which may or could pose a risk of injury or threat to health of the environment, including, without limitation:

(a) Those substances included within the definitions of hazardous substance, hazardous waste, hazardous material, toxic substance, solid waste, or pollutant or contaminant in, or otherwise regulated by any Environmental Law;

(b) Those substances listed in the United States Department of Transportation Hazardous Materials Table (49 CFR 172.101, including appendices and amendments thereto), or by the Environmental Protection Agency (or any successor agency) as hazardous substances (40 CFR Part 302 and amendments thereto);

(c) Such other substances, materials, or wastes which are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and

(d) Any material, waste, or substance which is (i) petroleum or refined petroleum products; (ii) asbestos in any form; (iii) polychlorinated biphenyls; (iv) flammable explosives; (v) radioactive materials; or (vi) radon.

11.1.4 Person means an individual, partnership, corporation, trust, limited liability company or other entity.

11.1.5 Related Parties means, with respect to any Person, the city council members, officers, public officials, managers, directors, governors, shareholders, partners, members, employees, trustees, beneficiaries, agents, contractors, attorneys, successors, personal representatives, heirs, executors, or assigns of any such person or entity.

11.1.6 Third Party means a Person other than Buyer or Seller or their respective affiliates.

11.1.7 Sellers Affiliates means Seller's partners, managers, employees, designees,

representatives, agents, licensees, contractors, guests and/or any other Persons or entities authorized by Seller.

11.1.8 Statutes and Regulations. Any reference in this Agreement to statutory or regulatory sections shall be deemed to include any amendments thereto and any successor sections.

11.2 Assignment. Buyer shall not have the right assign this Agreement, or any interest therein, or a controlling interest in Buyer.

11.3 Binding Effect. The provisions of this Agreement are binding upon and will inure to the benefit of the parties and their respective heirs, personal representatives, successors and permitted assigns, including, without limitation, all members of Seller irrespective of any dissolution of Seller after execution of this Agreement or after consummation of a Closing.

11.4 Attorneys Fees. If any action is brought by either party in respect to its rights under this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and court costs as determined by the court.

11.5 Waivers. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision, whether or not similar, nor will any waiver be a continuing waiver. No waiver will be binding unless executed in writing by the party making the waiver. Either party may waive any provision of this Agreement intended for its benefit, provided, however, such waiver will in no way excuse the other party from the performance of any of its other obligations under this Agreement.

11.6 Construction. This Agreement will be construed according to the laws of the State of California, without giving effect to its conflict of laws principles. References in this Agreement to Sections are to the Sections in this Agreement, unless otherwise noted. This Agreement shall not be construed as if prepared by one of the parties, but rather according to its fair meaning as a whole, as if both parties had an equal role in its negotiation and preparation.

11.7 Time of the Essence. Time is of the essence of this Agreement.

11.8 Notices.

11.8.1 Any demand, notice or communication required or permitted to be given under this Agreement must be in writing and is deemed given on (a) the day personally delivered, (b) the third business day after the date of mailing by certified or registered first class mail, postage prepaid, return receipt requested, or (c) one business day after accepted for next business day delivery by a national commercial delivery service which provides package tracking services (**Overnight Delivery**), or (d) when transmitted by e-mail or telephone facsimile (provided that such Notice is confirmed on the same day by sending a copy to the addressee(s) by Overnight Delivery), in each case addressed to the parties at their respective addresses set forth below (or to such other address as the Parties hereto may designate by notice in the manner set forth herein). Notices which are rejected or refused or which cannot be delivered because of changed address of which no notice was given shall be deemed delivered.

11.8.2 Notice to Seller shall be sent to:  
City of Needles  
Attn: City Manager  
817 Third Street  
Needles, CA 92363

11.8.3 Notice to Buyer shall be sent to:

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11.8.4 Notice to Escrow Agent shall be sent to:

First American Title Insurance Company  
74770 Highway 111, Suite 101  
Indian Wells, California 92210  
Attn: Kelly Collier  
Fax: 866-371-1073  
e-mail to: [kcollier@firstam.com](mailto:kcollier@firstam.com)

With a copy to:

First American Title Insurance Company  
323 Court Street  
San Bernardino, California 92401  
Attn: Matt Hooks  
e-mail to: [mhooks@firstam.com](mailto:mhooks@firstam.com)

11.8.5 Each party may change their address for the purpose of this Section by giving written notice of such change to the other party in the manner provided in this Section.

11.9 Further Documentation. Each party agrees in good faith to execute such further or additional documents as may be necessary or appropriate to fully carry out the intent and purpose of this Agreement.

11.10 Time Periods. Except as expressly provided for in this Agreement, the time for performance of any obligation or taking any action under this Agreement will be deemed to expire at 5:00 p.m. (California time) on the last day of the applicable time period provided for in this Agreement. If the time for the performance of any obligation or taking any action under this Agreement expires on a Saturday, Sunday or legal holiday, the time for performance or taking such action will be extended to the next succeeding day which is not a Saturday, Sunday or legal holiday. Any reference in this Agreement to days shall mean calendar days unless the Agreement expressly states business days.

11.11 No Third Party Beneficiary. No term or provision of this Agreement is intended to, or shall, be for the benefit of any Person not a party hereto and no such Person shall have any right or cause of action hereunder.

11.12 Headings and Counterparts. The headings of this Agreement are for purposes of reference only and will not limit or define the meaning of any provision of this Agreement. This Agreement may be executed in any number of counterparts, each of which will be an original but all of which will constitute one and the same instrument.



11.13 Entire Agreement. This Agreement, which includes the following Exhibits:

- Exhibit A** - Legal Description of the Property
- Exhibit B** - Deposit and Successful Bidder Agreement for the Purchase of City-Owned Property
- Exhibit C** - Form of Grant Deed

constitutes the entire agreement between the parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the parties, oral or written, are superseded by and merged in this Agreement. No supplement, modification or amendment of this Agreement will be binding unless in writing and executed by Buyer and Seller.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the Effective Date.

**Buyer:**

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**Seller: CITY OF NEEDLES**

By: \_\_\_\_\_  
Jeff Williams  
Mayor  
Date: \_\_\_\_\_

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Date: \_\_\_\_\_

**ATTEST:**

\_\_\_\_\_  
Dale Jones  
City Clerk

**APPROVED AS TO FORM:**

SBEMP LLP

\_\_\_\_\_  
John O. Pinkney  
City Attorney

**ACCEPTED AND AGREED TO SOLELY  
FOR PURPOSES OF ACTING AS  
ESCROW AGENT:  
FIRST AMERICAN TITLE INSURANCE COMPANY**

By:

**EXHIBIT C**  
**TO PURCHASE AGREEMENT**

**LEGAL DESCRIPTION OF THE PROPERTY**

That certain property situated in the County of San Bernardino, City of Needles, State of California, described as follows:

SAMPLE

**EXHIBIT C**

**TO PURCHASE AGREEMENT**

**DEPOSIT AND SUCCESSFUL BIDDER AGREEMENT FOR PURCHASE**

**SAMPLE**

**EXHIBIT C  
TO PURCHASE AGREEMENT**

**FORM OF GRANT DEED**

**SAMPLE**

BID DOCUMENT

NAME OF INDIVIDUAL OR ORGANIZATION PLACING BID: \_\_\_\_\_

APN NO. OF PROPERTY BEING BID ON: \_\_\_\_\_  
(A SEPARATE BID DOCUMENT IS REQUIRED FOR EACH PARCEL BEING BID ON:

BID AMOUNT: \$\_\_\_\_\_

THE FOLLOWING DOCUMENTS NEED TO BE COMPLETED AND SUBMITTED WITH THE "BID DOCUMENT"

1) **LETTER OF INTENT –**

Please Provide:

Name of Buyer:

Identify Acreage of Part or All of Parcel:

Purchase Price:

Intent with Property:

2) **A DEPOSIT CHECK REPRESENTING 10% OF YOUR BID AMOUNT, made payable to:  
City of Needles**

3) **DOCUMENTATION FROM BANKING INSTITUTION INSTRUCTING THAT FULL AMOUNT OF  
PURCHASE PRICE IS AVAILABLE AT THE TIME OF THE BID OPENING**