



# City of Needles, California Request for City Council Action

CITY COUNCIL  NPUA

Regular  Special

**Meeting Date:** December 15, 2020

**Title:** City Council Resolution No. 2020-82  
A Resolution of the City Council of the City of Needles Authorizing the City Manager to Execute an Agreement for the Sale of City-Owned Property for \$2,500, An Approximately .78 Acre Parcel of a 6.5 Acre Parcel, Located in the Vicinity of Lillyhill Dr. and Casa Linda Street, also known as APN 0185-233-56

**Background:** The City received an offer of purchase of City-Owned property, Assessor’s Parcel Number 0185-233-55, located in the vicinity of Lilly Hill and Casa Linda Street. The parcel is approximately 6.5 acres and the buyer has proposed the purpose of approximately .78 acre (100’x342’) with a purchase offer of \$2,000. The buyer obtained a “Broker Price Opinion” (BPO) from a local broker, setting the market value between \$1,800-\$2,000. The City has incidental expenses in the amount of \$500 that will be added to the purchase price for a total purchase price of \$2,500.

The parcel includes two non-contiguous area of land, including the City’s water main at the intersection of Lilly Hill and Clary Drive, as well as excess area attached to the area being purchased. These two sections will need to be carved off of the proposed purchase area, with the cost of the activity being borne by the applicant, and will remain as “City of Needles” owned property

Included in the packet as Exhibit “A” is the Purchase and Sales Agreement drafted by the City Attorney’s Office.

**Fiscal Impact:** Revenue for the City

**Environmental Impact:** N/A

**Recommended Action:** Approve Resolution No. 2020-82, Authorizing the City Manager to Execute an Agreement for the Sale of City-Owned Property for \$2,500, An Approximately .78 Acre Parcel of a 6.5 Acre Parcel, Located in the Vicinity of Lillyhill Dr. and Casa Linda Street, also known as APN 0185-233-56

**Submitted By:** Cindy Semione, Planning Dept.

**City Management Review:** \_\_\_\_\_ **Date:** \_\_\_\_\_

Approved: <input type="checkbox"/>	Not Approved: <input type="checkbox"/>	Tabled: <input type="checkbox"/>	Other: <input type="checkbox"/>
			Agenda Item: _____

**RESOLUTION NO. 2020-82**

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEEDLES,  
CALIFORNIA, ACCEPTING THE SALE OF A .78 ACRE (100'X342') PORTION OF  
CITY-OWNED PROPERTY LOCATED NEAR THE INTERSECTION OF  
LILLYHILL DRIVE AND CASA LINDA ST., APN 0185-233-55**

**WHEREAS**, a legal notice was placed in the Needles Desert Star for the acquisition of all or a portion of Assessor's Parcel No. 0185-233-55; and

**WHEREAS**, the parcel is approximately 6.5 acres in size and the minimum bid amount was based on the appraised value of between \$1,800 and \$2,000; and

**WHEREAS**, the auction took place through a sealed-bid process; and

**WHEREAS**, one bid was received from D. J. Huffman as representative for Golden Valley Cable & Comm. Inc. in the amount of \$2,000; and

**WHEREAS**, the city has incidental expense associated with the sale of the parcel in the amount of \$500; and.

**WHEREAS**, attached as Exhibit "A" is the proposed Purchase and Sales Agreement.

**NOW, THEREFORE, BE IT RESOLVED** by the City Council of the City of Needles, California, finds and determines that it is in the best interest of the City to sell the .78 acres of city-owned property identified as Assessor's Parcel No. 0185-233-55-0000 in the amount of \$2,500 from Golden Valley Cable & Comm. Inc., with conditions, and authorize the City Manager to negotiate the terms and develop a Purchase and Sales Agreement for Council Consideration.

**PASSED, APPROVED AND ADOPTED** at an adjourned regular meeting of the City Council of the City of Needles, California held on the 15th day of December, 2020 by the following roll call vote:

AYES:  
NOES  
ABSENT  
ABSTAIN

\_\_\_\_\_  
Mayor

Attest:

\_\_\_\_\_  
City Clerk

(Seal)

Approved as to form:

\_\_\_\_\_  
City Attorney

## **PURCHASE AGREEMENT AND JOINT ESCROW INSTRUCTIONS**

This AGREEMENT is entered into this \_\_\_\_ day of December 2020 (“Effective Date”), by and between The City of Needles, a charter city (“*Seller*”), and GOLDEN VALLEY CABLE & COMMUNICATIONS, INC., an Arizona corporation (“*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 (“*Property*”) located in the City of Needles, California, a 100’x 342’ un-subdivided parcel located behind 1315 to 1355 Lillyhill Dr., Needles, CA 92363 consisting of approximately two (2) acres a diagram of which is attached hereto as **Exhibit “A”** and by this reference incorporated herein;

WHEREAS, the Property is currently part of a larger parcel of approximately sixty five (65) acre and Buyer will be responsible to record a Final Parcel Map at Buyers sole cost, expense and risk on or before the first anniversary date of the Effective Date.

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

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows.

### **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 in accordance with the terms, covenants and conditions set forth in this Agreement. Buyer shall be obligated to obtain a Final Parcel Map subdividing the Property from the balance of the larger parcel of which it is a part at the time of executing this Agreement. Buyer shall be responsible at its sole cost and expense to take all actions required to subdivide the Property including but not limited to retaining professionals such as engineers, surveyors and attorneys to file the application for Parcel Map and to process the Parcel Map. Buyer is responsible to file all related applications with the City and to pay all of City’s standard fees and costs. For the sake of clarity, Buyer acknowledges that City does not waive any of its authority and discretion to approve, conditionally approve or disapprove the Parcel Map application or related applications. City will process the Parcel Map application and any related applications in accordance with applicable law. City shall not be obligated to approve the Parcel map application if to do so would violate applicable law. Notwithstanding anything to the contrary in this Agreement, City shall have the final decision regarding the dimensions and the location of the Parcel, in its sole and absolute discretion. If Buyer has not obtained and recorded the Final Parcel Map on or before the first anniversary of the Effective Date, Buyers Deposit shall be released to Seller as liquidated damages and this Agreement shall automatically terminate and be of no further force or effect.

1.2 Purchase Price. The purchase price of the Property (“**Purchase Price**”) shall be the amount of **Two Thousand Five Hundred Dollars (\$2,500.00)**.

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 9.7.4** below, and executed by Buyer and Seller (“*Closing Statement*”).

1.4 Amount and Deposit of Earnest Money. Within 48 hours the Effective Date, Buyer deposited with Escrow, an earnest money deposit in the amount of Five Hundred Dollars (**\$500.00**) (hereinafter the “*Earnest Money*”). The Earnest Money shall be deposited in Escrow Agent’s non-interest bearing escrow/trust account pending disbursement pursuant to this Agreement. The sum of one hundred dollars (\$100.00) shall be nonrefundable and shall be paid to Seller in the event that Buyer cancels this Agreement in accordance with Section 4.

## **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 Buyer’s Closing instructions. The date for the Closing (“*Closing Date*”) shall be on the tenth day after the recordation of the Final parcel map, as referred to in Section 1.1.

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 Agent’s engagement. If there are conflicts between the terms of this Agreement and the terms of the Escrow Agent’s standard form printed escrow instructions, the terms of this Agreement will control.

2.5 Escrow Cancellation Charges. If Escrow fails to close because of Seller’s default, Seller will pay all customary escrow cancellation charges. If Escrow fails to close because of Buyer’s 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, only the following to Buyer:

3.1.1 Preliminary Title Report. A current preliminary title report (the “**Title Report**”) for the Property (which shall be for the 65 acre parcel) prepared by Escrow Agent. The Title Report will show the vesting 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.

**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 provided that to do so does not delay the Closing. 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 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 (“**Buyer’s 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 insuring against the Disapproved Items, by giving Buyer written notice (“**Seller’s 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.

(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 Buyer's Right to Enter and Inspect the Property. From time to time following the Effective Date, Buyer and/or Buyer's representatives, contractors, and agents may enter the Property to examine the Property, to conduct non-invasive tests, inspections, studies.

4.2.1 Buyer Restoration and Indemnity. Buyer will restore any physical damage to the Property caused by Buyer's Studies, and will indemnify, defend and hold harmless Seller and Seller's public officials, Council Members and employees ("Related Parties") from, and against any Claims, damages, liens, stop notices, liabilities, losses, costs and expenses, including reasonable attorneys' fees and court costs caused by Buyer's Studies (unless resulting from Seller's 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 the Effective Date to complete the Buyer's inspections and approve or disapprove the Property ("Due Diligence Period"). Buyer's failure to timely approve or disapprove shall be deemed approval. If Buyer disapproves the Property, this Agreement shall terminate, and upon such termination the Earnest Money shall be returned to Buyer.

## SECTION 5 CLOSING DOCUMENTS; TITLE POLICY

5.1 Seller's 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, Buyer's 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 ("**Deed**") subject to the covenants provided for in this Agreement and the Deed, a copy of which is attached hereto as **Exhibit "B"**.

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.

5.2 Buyer's 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 Seller's 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 Buyer's Closing Funds. The cash portion of the Purchase Price, less the Earnest Money, plus Buyer's 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.

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

## **SECTION 6 CLOSING THE TRANSACTION**

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

6.2 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 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 Seller's 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 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.

6.4 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.

## 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 ten percent (10%) of the Purchase Price, 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 ten percent (10%) of the Purchase Price, 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, finder's 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 finder's 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. 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 Buyer's 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 Seller's 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 Seller's express representations and warranties in this Agreement, Buyer, for Buyer and Buyer's 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 Buyer's Development Covenants. Buyer and Seller agree that the covenants referred to in this **Section 7.5.3** 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 referred to in this **Section 7.5.3** which are more specifically set forth in detail in the Deed attached hereto as **Exhibit "B"**. Buyer shall commence construction of the Project identified in the Deed within 48 months after the recordation of the Deed and diligently complete the same to certificate of occupancy thereafter within 60 months in accordance with the Deed which is incorporated herein by this reference. If Buyer fails to so commence construction within said 48 months and diligently complete the same thereafter to Certificate of Occupancy within 60 months, The City of Needles shall have the option to repurchase the real property from Buyer for the Purchase Price less ten percent (10%) as specifically provided in the Deed.

## **SECTION 8 REMEDIES**

8.1 Seller's Remedies. If the Closing does not occur due to any 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 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 the Earnest Money shall be paid to Seller with no further instruction to Escrow Holder from Buyer.

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

**BUYER'S INITIALS:** \_\_\_\_\_

**SELLER'S INITIALS:** \_\_\_\_\_

8.2 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 identifying the nature of the default, then, as an alternative to all other remedies that 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, the Earnest Money shall be returned to Buyer and the parties shall have no further liability or obligation to one another.

## **SECTION 9 GENERAL PROVISIONS**

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

9.2 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.

9.3 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.

9.4 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.

9.5 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.

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

9.7 Notices.

9.7.1 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.

9.7.2 Notice to Seller shall be sent to:

City of Needles  
Attn: City Manager  
817 Third Street  
Needles, CA 92363

9.7.3 Notice to Buyer shall be sent to:

9.7.4 Notice to Escrow Agent shall be sent to:

Chicago Title Agency, Inc.  
3640 Highway 95  
Bullhead City AZ 86442  
Fax: 928 763 4434  
Jill.Jackson@ctt.com

9.7.5 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.

9.8 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.

9.9 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.

9.10 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.

9.11 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.

9.12 Entire Agreement. This Agreement, which includes the Exhibits and Recitals 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 set forth above.

**SELLER:**  
THE CITY OF NEEDLES, a charter city

**BUYER:**  
GOLDEN VALLEY CABLE &  
COMMUNICATIONS, INC., an Arizona  
corporation

By: \_\_\_\_\_

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Its: \_\_\_\_\_

Date: \_\_\_\_\_

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:**

By: \_\_\_\_\_

**EXHIBIT A**

**DIAGRAM OF THE PROPERTY**

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

**EXHIBIT "B"**  
**GRANT DEED**

RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

MAIL TAX STATEMENTS TO:

APN:

SPACE ABOVE THIS LINE RECORDER'S USE

**GRANT DEED**

THE UNDERSIGNED GRANTOR(S) DECLARE(S) THAT DOCUMENTARY TRANSFER TAX IS \$ \_\_\_\_\_

- computed on full value of property conveyed, or
- computed on full value less value of liens or encumbrances remaining at time of sale,
- [unincorporated area; [ ] City of \_\_\_\_\_ [Only Use Where a City has a transfer tax]

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, THE CITY OF NEEDLES a Charter City ("Grantor"), hereby GRANTS to \_\_\_\_\_ ("Grantee"), the following described real property in the City of Needles, County of San Bernardino, State of California, together with (i) all rights, privileges and appurtenances belonging or appertaining thereto and (ii) all right, title and interest of Grantor in:

See **Exhibit "A"** attached hereto and incorporated herein by reference

Subject to current taxes and other assessments, covenants, conditions, easements, exceptions, reservations, restrictions, rights of way, encumbrances, liens, obligations and liabilities as may appear of record.

**GRANTOR:**

THE CITY OF NEEDLES a Charter City

By: \_\_\_\_\_

Dated: \_\_\_\_\_, 2020

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California )  
County of \_\_\_\_\_ )

On \_\_\_\_\_, 2020, before me, \_\_\_\_\_, notary public, personally appeared \_\_\_\_\_ who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature: \_\_\_\_\_ (Seal)

**EXHIBIT "A" TO GRANT DEED  
(LEGAL DESCRIPTION OF THE PROPERTY)**

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