



## City of Waco, Texas

### Request for Sealed Bid Sale of Real Property

RFB No. 2017-083

Sale of 4224 Cobbs Drive

**Issue Date: January 2, 2018**

**Closing Date & Time: March 8, 2018 at 10:00 a.m.**

**Opening Date & Time: March 8, 2018, at 10:01 a.m.**

RFB Opening Location: Purchasing Services Office, 1415 N. 4<sup>th</sup> Street, Waco, Texas

For Information Contact: Bryan Gray, Purchasing Services, 254-750-6640

Purchasing Services  
Post Office Box 2570  
Waco, Texas 76702-2570  
Telephone 254 / 750-8060  
Fax 254 / 750-8063  
[www.waco-texas.com](http://www.waco-texas.com)

## TABLE OF CONTENTS

### Register Interest form

- I. Schedule for Solicitation
- II. Contact with City of Waco
- III. Definitions
- IV. Notice of Sale of Property
- V. Request For Bids – Submission And Award Procedures

### **Appendices**

- A. List of Properties for Sale
  
- B. Forms to Complete and Return
  - (1) Bid Sheet
  - (2) Business Identification Form
  - (3) Conflict of Interest Questionnaire (CIQ form)
  - (4) Disclosure of Relationships with City Council/Officers (City Charter)
  - (5) Non-collusion Affidavit
  - (6) Texas Public Information Act
  
- C. Form Purchase and Sale Agreement



# City of Waco, Texas

RFB No. 2017-083  
For Sale of 4224 Cobbs Drive

## REGISTER INTEREST

**You have received a copy of the above described Request document. If you would like to register your interest in this project so that you will receive any future notices or addenda concerning the project, please fill in the information requested below and fax this page to 254-750-8063. You may also scan this page and email to: \_\_\_\_\_.**

**Company/Firm:** \_\_\_\_\_

**Name of Contact Person(s):** \_\_\_\_\_

**Email(s):** \_\_\_\_\_

**Telephone:** \_\_\_\_\_ **Fax:** \_\_\_\_\_

**Mailing Address:** \_\_\_\_\_

It is your responsibility to complete and return this form to the City. Failure to do so will result in your not receiving notices and addenda related to this project from the City of Waco.

Notices and addenda are posted on the City's website and can be accessed at: <http://www.waco-texas.com/purchasing-rules.asp>.

City of Waco Purchasing Services  
Post Office Box 2570  
Waco, Texas 76702-2570  
Telephone 254 / 750-8060  
Fax 254 / 750-8063  
[www.waco-texas.com](http://www.waco-texas.com)

## I. Schedule for Solicitation

The proposed schedule of events is tentative and may be modified throughout the selection process at the discretion of the City of Waco.

Issuance of the RFB	January 2, 2018
Bids due by 10:00 a.m.	March 8, 2018
Evaluation of submission & establish ranking	March 9, 2018 to March 13, 2018

Tentatively, the final selection decision will be made and submitters will be notified of award by March 19, 2018. This schedule is subject to change by the City.

## II. Contact with City of Waco

The contact person for this solicitation process is: Bryan Gray, Purchasing Manager who can be reached at:

Email: [bryang@wacotx.gov](mailto:bryang@wacotx.gov) Telephone: (254) 750-6640 Fax: (254) 750-8063

Questions concerning the solicitation must be submitted to contact person **in writing** on or before date shown in the schedule above.

<b>Via U.S. Mail:</b> City of Waco Purchasing Services Attn: Bryan Gray, Purchasing Manager P.O. Box 2570 Waco, Texas 76702-2570	<b>Via Delivery Services/Personal Delivery :</b> City of Waco Purchasing Services Attn: Bryan Gray, Purchasing Manager 1415 North 4 <sup>th</sup> Street Waco, Texas 76707 <b>NOTE: US Mail does NOT deliver to street address</b>
--	---

Inquiries concerning the properties themselves may be directed to **Kendra Anderson-Zadnik, Property Manager, City of Waco at (254) 750-5651, [kendraa@wacotx.gov](mailto:kendraa@wacotx.gov).**

**Contact with someone other than the Purchasing Agent or the Property Manager listed above, or his/her designated representative, at the City of Waco concerning this solicitation may be grounds for removal from consideration.**

Interpretation, modification, corrections, or changes to the solicitation documents will be made by addenda issued by the City of Waco. Addenda will be made available <http://www.waco-texas.com/purchasing-rules.asp>. Interested bidders are encouraged to return the Register Interest form on the previous page.

### III. Definitions

The following definitions apply to this document and the transaction between the City and the selected submitter unless otherwise designated in the context. Terms, which are singular, may include multiple, where applicable and when in the best interests of the City:

- (1) “Bid” or “Submission” refers to a response submitted to an RFB
- (2) “City” means and refers to the City of Waco, Texas.
- (3) “Company” or “Firm” means and refers to any submitter, whether such submitter be a sole proprietor, corporation, company, partnership, company, or any other entity legally defined or recognized under the laws of the State of Texas.
- (4) “Day” means a calendar day unless otherwise specifically defined.
- (5) “RFB” means and refers to a Request For Bid that will be awarded based on lowest responsible bid to City of Waco.
- (6) “Selected submission” means and refers to the submission sent to the City of Waco by the Selected Firm.
- (7) “Selected Firm” means the firm who is selected by the City and to whom the City Council/City Manager awards a contract for the services or commodities requested in this solicitation.
- (8) “Solicitation” means an RFB issued by the City Waco seeking products or services described in the document.
- (9) “Submitter” or “Bidder” or “Contractor” means a firm that submits a response to a solicitation.

## IV. NOTICE OF SALE OF PROPERTY

### A. Property offered for sale

The property or properties offered for sale are listed on Exhibit A, attached hereto and incorporated herein.

### B. Facts Regarding Property offered for sale

Each potential purchaser should carefully read this information and evaluate these facts in light of the anticipated use of the property. These important legal facts regarding the property offered for sale should be considered:

- (1) Purchaser will receive a **Deed Without Warranty** from the City of Waco. A **Deed Without Warranty has no warranty, either expressed or implied.**
- (2) The City will not provide Title Insurance or a current survey of the property.
- (3) The City makes no guarantee as to the availability of utilities to the property, and the property will be conveyed “as is”. Specifically, no warranty, written, expressed or implied, is made regarding the property as to the suitability of use of for building/construction of any structure(s), suitability for habitation, compliance with City codes, or clear title. It is the sole responsibility of the bidder to examine the property, research building codes, encumbrances, zoning designations, physical location, and all other aspects of the property prior to submitting a bid on that property.
- (4) Purchasers should confirm location of the property on the ground prior to the sale. Maps and plats of the property may be on file in the office of the County Clerk of McLennan County at Waco, Texas. If a property was acquired through tax foreclosure, pleadings in the tax suit may be on file in the Office of the District Clerk of McLennan County, Texas.
- (5) The Solid Waste Department of the City of Waco has two kinds of accounts: residential and commercial. If the property is not bought and used as the owner’s personal home, Solid Waste will classify it as investment, and therefore, commercial property. Rules for removal of bulk waste for residential accounts differ from rules for the collection of bulk waste from commercial accounts, and commercial accounts are subject to a different and higher fee structure. Remodeling and tenant evictions are subject to commercial account fee structures. Purchasers are expected to know the proper classification of their properties and to be prepared for the costs of bringing them in compliance with City Codes, including costs for repair, demolition, and waste removal.
- (6) No oral guarantee or assurance concerning any property has been made, and furthermore, no City employee is authorized to make any guarantee or

assurance. Bidders are cautioned to investigate this property thoroughly before tendering a bid.

Further details of the properties may be located on the City of Waco Property Management Website <http://www.CityofWacoProperties.com>.

C. **Reservations by City:** The City of Waco reserves the right to reject any and all submittals. This issuance of this solicitation does not obligate the City to contract for expressed or implied services. The City of Waco will not reimburse bidders for any costs incurred during the preparation or submittal of responses to this solicitation. Furthermore, the City expressly reserves the right to:

- (1) Waive any defect, irregularity, or informality in any submittal or procedure;
- (2) Extend the solicitation closing time and date;
- (3) Reissue this solicitation in a different form or context;
- (4) Waive minor deviations from specifications, conditions, terms, or provisions of the solicitation, if it is determined that waiver of the minor deviations improves or enhances the City's business interests under the solicitation;
- (5) Extend any contract when most advantageous to the City, as set forth in this solicitation; and/or
- (6) Retain all bids submitted and to use any ideas in a bid regardless of whether or not that bid is selected.

## V. REQUEST FOR BIDS – SUBMISSION AND AWARD PROCEDURES

### A. Requirements

**All bids must be submitted on the official City of Waco Bid Form** included in the Bid Package provided. On the Bid Form, bidders must elect whether they want to utilize a purchase and sales agreement (thus, having a contingency period).

All Bid Forms submitted must be secured in a sealed envelope. The bidder must provide the requested information on the face of the envelope and must comply with all of the Instructions for Bidders. Bids submitted which are not in compliance with the Instructions for Bidders are subject to being disqualified at the sole discretion of the City of Waco. Bid forms and Instructions for Bidders may be obtained from the City of Waco, Purchasing Services at the City of Waco Operations Center, 1415 N. 4<sup>th</sup> St., Waco, Texas 76707 or on the City of Waco website (<http://www.waco-texas.com/bids.asp>).

**B. Completeness of Submission**

- (1) Bidders are responsible for examining and being familiar with all specifications, drawings, standard provisions, instructions, and terms and conditions of the solicitation and their responses.
- (2) The bidder must attach all required forms with each submission copy. Forms must be signed by a representative of the bidder authorized to bind the bidder contractually. The bidder must include a statement identifying any exceptions to this RFB or declare that there are no exceptions taken to the RFB.

**C. Bid Response Date and Location**

**Bids must be received at the office of Purchasing Department by 10:00 a.m. (Central Time) on March 8, 2018**

Interested parties may submit their bids **Via Delivery Services or Personal Delivery** to:

City of Waco Purchasing Services  
Attn: Bryan Gray, Purchasing Manager  
1415 North 4<sup>th</sup> Street  
Waco, Texas 76707

Interested parties may also submit their bids through **U.S. Mail** delivered to:

City of Waco Purchasing Services  
Attn: Bryan Gray, Purchasing Manager  
P.O. Box 2570  
Waco, Texas 76702-2570

If using U.S. Mail, note that U.S. Mail is initially received at Waco City Hall and then delivered to the office of Purchasing Services by a City courier. That delivery may occur a day or more after being received at Waco City Hall. Allow additional time in advance of the bid due date for U.S. Mail delivery. If the Purchasing Office has not received the bids by the stated deadline, the bid will be returned unopened.

All submittals shall be sent to the attention of the Purchasing Agent in a sealed envelope that is clearly marked on the outside as follows:

**“RFB 2017-083 Sale of 4224 Cobbs Drive”**

**Bid Opening: 10:00 a.m. (Central Time) on March 8, 2018.**

**Bidders accept all risk of late delivery bids regardless of instance or fault.** A bid received after the submission deadline will not be considered and will be returned unopened to the submitter. Bidders accept all risks of delivery.

The City will NOT accept a response submitted by facsimile transmission (fax) or by electronic mail (email).

All submissions and accompanying documentation will become the property of the City.

**D. Modification to or Withdrawal of Submission**

Submissions cannot be altered or amended after the submission deadline passes. Submissions may be modified prior to the deadline by providing a written notice to the Purchasing contact person at the address previously stated. To modify a submission prior to the submission deadline:

- (1) Submit a written notice of the modification **WITHOUT** revealing the bid price. The modification should provide the addition, subtraction, or other modifications so that the final prices or terms will not be revealed to the City until the sealed bid is opened.
- (2) The written modification may be submitted by electronic transmission (fax or email or personal delivery) to Purchasing Agent identified earlier in this document. The written modification must be received by the City prior to the closing time.
- (3) If the modification is submitted through an electronic transmission (fax or email), the City must receive an original of the modification document signed by the bidder and submitted to a delivery company (UPS, FedEx, etc.) prior to the bid closing time. If the original of the modification was not submitted to a delivery company prior to the closing time or is not received within three (3) days after the closing time of the bid, consideration will not be given to the modifications provided in the electronic transmission.

A submission may also be withdrawn by providing the notice in person by a representative of the bidder who can provide proof of his authority to act for the bidder. The representative will be required to execute a receipt reflecting the submission is being withdrawn. If a submission is withdrawn before the submission deadline stated herein, the bidder may submit a new sealed bid provided the new bid is received prior to the closing date and time deadline stated on the cover page and in the Schedule for the Solicitation. This provision does not change the common law right of a submitter to withdraw a submission due to a material mistake in the submission.

**E. Bidder's Cost to Develop Submission**

Costs for developing and assembling submissions in response to this solicitation are entirely the responsibility and obligation of the bidder and shall not be reimbursed in any manner by the City.

**F. Method of Award**

- (1) For this solicitation, the City will award the contract to the highest responsible bidder. Property will not be sold to anyone having a past due tax account.
- (2) If there is a tie for the highest bid from two responsible bidders, the City will sell the property to the bidder in the following order: 1) bidder offering to purchase the

property with no purchase and sale agreement (and thus no contingency period); or 2) proposing the shortest contingency period in the purchase and sale agreement.

- (3) Compliance with all bid requirements, delivery, and needs of the City are considerations in evaluating bids. The City of Waco reserves the right to contact any offeror, at any time, to clarify, verify or request information with regard to any bid.
- (4) During the evaluation process, the City reserves the right, where it may serve the City's best interest, to request additional information or clarifications from bidders.
- (5) The City Council of the City of Waco reserves the right to review each and every bid and to award the property to the bidder submitting the bid which it deems most acceptable. The City Council further reserves the right to reject any and all bids if no bid is deemed acceptable.
- (6) On the Bid Form, bidders must elect whether they want to utilize a purchase and sales agreement (thus, having a contingency period). If a bidder selects the purchase and sale agreement option, the bidder must also note on the bid form the contingency period in an amount not to exceed 60 days and submit a pre-qualification letter with the bid (qualifying the bidder for the purchase price).
- (7) The successful bidder utilizing a purchase and sale agreement must execute the purchase and sale agreement in the form attached to this solicitation (this agreement requires earnest money in the amount of 5% of the purchase price). The successful bidder must deliver the executed purchase and sale agreement **within 15 days of the bid opening date**. Delivery must be made to the Program Management Office of the City of Waco, located in the Dr. Mae Jackson Development Center at 401 Franklin Avenue, Waco, Texas 76701. To be effective, the purchase and sale agreement must be approved by Council. Approval of the purchase and sale agreement and the sale will be presented to the City Council for action at the first feasible meeting. Closing and funding of the sale must occur within 120 days from the date of the City Council approval.
- (8) If the successful bidder is not utilizing the purchase and sale agreement, the bidder must make payment of the total amount of the bid offered to the City of Waco **by 5:00 p.m. on the first business day after the bid opening date**. Payment must be cash, personal check, certified check, or cashier's check made payable to the City of Waco, and delivered to the Program Management Office of the City of Waco, located in the Dr. Mae Jackson Development Center at 401 Franklin Avenue, Waco, Texas 76701. If payment is not made within the prescribed time, or is determined to be invalid, the first place bid will be disqualified and the second place bid will be considered.
- (9) If any of the following occurs, the first place bid will be disqualified and the City may offer the sale to the next bidder:

- (a) The purchase and sale agreement, if applicable, is not executed timely;
- (b) The property is not sold pursuant to the purchase and sale agreement; or
- (c) Payment under paragraph V.F.9 is not timely made or is invalid.

This bid price and purchase and sale agreement, if applicable, also must be approved by the City Council to be effective.

- (10) The successful bidder may be required to execute a contract or other documents in connection with the sale of the applicable property.

**G. Contract Award and Execution**

The final sale and any purchase and sale agreement must be approved by the Waco City Council. The successful bid will be presented to the City Council for action at the first feasible meeting.

# **APPENDIX A**

## **List of Properties for Sale**

4224 Cobbs Drive - Lot 2, Block 1, Lake Air Little League Addition	Minimum Bid \$500,000.00
---	--------------------------

# **APPENDIX B**

## **Forms to Complete and Return**

- (1) Bid Sheet
- (2) Business Identification Form
- (3) Conflict of Interest Questionnaire (CIQ form)
- (4) Disclosure of Relationships with City Council/Officers (City Charter)
- (5) Non-collusion Affidavit
- (6) Texas Public Information Act

RFB 2017-083  
(Offer to Purchase)

**BID FORM  
CITY OF WACO**

City Council, City of Waco, Waco, Texas

The undersigned hereby acknowledges that (s)he has been provided with a copy of the RFB, including the **Instructions for Bidders**, that (s)he has read and understands the information contained therein (including that no guarantees have been or can be made), and that in compliance with RFB, (s)he proposes the purchase of the following described property for the amount indicated. Further, the undersigned agrees, if this bid offer is the highest bid, to fully comply in strict accordance with the RFB, the bid, and provisions attached thereto and execute the purchase and sale agreement attached to the RFB.

**PRINT ONLY**

**Address:** \_\_\_\_\_

**Legal Description:** \_\_\_\_\_

**Minimum Bid: \$** 500,000 \_\_\_\_\_

**Your BID Amount:** \_\_\_\_\_ **Date:** \_\_\_\_\_

**Purchase and Sale Agreement desired**  **Yes**  **No**

**If yes, Contingency Period:** \_\_\_\_\_ **(not to exceed 60 days) and**  
Pre-qualification letter attached (qualifying the bidder for the purchase price).

Printed name of Company or Individual: \_\_\_\_\_

Signature of Person Authorized to Bid: \_\_\_\_\_

Printed Signatory's Name and Title  
(if a legal entity): \_\_\_\_\_

Telephone Number: \_\_\_\_\_ E-mail: \_\_\_\_\_

Print the new Owner's Information as you would want it to appear on the Deed Without  
Warranty:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

City and State: \_\_\_\_\_



### Business Entity Identification

To identify the appropriate person to execute documents, please fill in this form:

Full Legal Name of Business Entity: \_\_\_\_\_  
 Doing Business As (assumed name): \_\_\_\_\_  
 Main Contact Person: \_\_\_\_\_  
 Registered Office Address: \_\_\_\_\_  
 Mailing Address: \_\_\_\_\_  
 Business Phone #: \_\_\_\_\_ Fax #: \_\_\_\_\_  
 Email Address: \_\_\_\_\_  
 DUNS Number: \_\_\_\_\_

**Check the appropriate box to designate the type of business entity & complete the information below.**

- Is entity:     Sole Proprietorship       Corporation       Professional Corporation  
                   General Partnership       Limited Partnership       Limited Liability Partnership  
                   Limited Liability Company       Professional Limited Liability Company  
                   Other \_\_\_\_\_

Date Business Started: \_\_\_\_\_ State Where Started: \_\_\_\_\_

**Depending on the type of business entity, the business will have owners, corporate officers, corporate directors, partners, managers, members, etc. Complete the information below.**

To provide information on more than one person or entity for boxes 1 to 5, please use back of page, blank page, or another copy of this form.

<b>1</b>	Name of Primary Officer, Partner, Owner, Manager, Member, Director	
<b>2</b>	Position or title with business entity	
<b>3</b>	Address (if different from above)	
<b>4</b>	Who is authorized to execute contracts and other documents?	
<b>5</b>	What is the title or position of the person listed in #4?	
<b>6</b>	Please provide a document (resolution, bylaw, agreement, etc.) that states the person identified in #4 has authority to execute contracts or execute affidavit.	

**In signing this form, I acknowledge that I have read the above and state that the information contained therein is true and correct.**

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

Print Name: \_\_\_\_\_ Print Title: \_\_\_\_\_

**DOCUMENT ESTABLISHING AUTHORITY**  
**TO EXECUTE CONTRACT**

When an instrument is signed on behalf of a business entity, documentation must be submitted that states the person signing on behalf of the business entity has the authority to do so. That documentation may be in the form of a resolution approved by a corporate board of directors, charter provisions, by-laws, partnership agreement, etc.

If a business entity has a document authorizing one or more individuals to enter into contracts or execute any instrument in the name of the business entity that it may deem necessary for carrying on the business of the entity, a certified copy of that document may be submitted.

This certification form is presented below for your convenience.

**CERTIFICATION REGARDING ATTACHED DOCUMENT**

I, the undersigned person, as the *{title}* \_\_\_\_\_ of  
*{business entity}* \_\_\_\_\_, certify that the attached  
document authorizes *[name of person]* \_\_\_\_\_ to execute  
contracts and other documents on behalf of said business entity and said document has not been  
revoked, altered, or amended and is still in full force and effect.

SIGNED this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
Print Name

**Attach document to this form**

If a corporation does not have a document authorizing someone to execute contracts on behalf of the corporation, this resolution form may be used to establish that authority.

**RESOLUTION FOR CORPORATION**

BE IT RESOLVED by the Board of Directors of \_\_\_\_\_

\_\_\_\_\_ that  
(Name of Corporation)

\_\_\_\_\_ is hereby authorized to execute a contract  
(Name)

with the City of Waco to complete/construct \_\_\_\_\_  
\_\_\_\_\_  
(Name of Project, Project No.)

\_\_\_\_\_, Secretary, is authorized to attest the  
signature binding the corporation.

\_\_\_\_\_  
Corporate Name

(Corporate Seal)

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

Title: \_\_\_\_\_

ATTEST:

\_\_\_\_\_  
Secretary of Corporation

**CERTIFICATION**

I, \_\_\_\_\_, certify that the above resolution  
(Secretary of Corporation)

was adopted by the Board of Directors of \_\_\_\_\_  
(Corporation)

at a meeting on the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
(Signature of Secretary)

\_\_\_\_\_  
(Print Name of Secretary)

If business entity has no document to provide to declare who has authority to execute a contract on behalf of a business entity, this affidavit may be completed.

**AFFIDAVIT OF AUTHORITY TO SIGN FOR COMPANY,  
CORPORATION, OR PARTNERSHIP**

Name of Business Entity: \_\_\_\_\_

Which is     Corporation                       Professional Corporation  
                  General Partnership     Limited Partnership     Limited Liability Partnership  
                  Limited Liability Company                       Professional Limited Liability Company

**On behalf of the above named business entity, I, the undersigned, certify and affirm that the following named person has authority to execute contracts and other documents on behalf of said business entity:**

Name: \_\_\_\_\_

Title: \_\_\_\_\_

I declare under penalty of perjury that the above is true and correct.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Title

SWORN TO AND SUBSCRIBED BEFORE ME this \_\_\_\_\_ day of \_\_\_\_\_,  
A.D., 20\_\_\_\_.

\_\_\_\_\_  
Notary Public In and For the State of Texas

My Commission Expires:

\_\_\_\_\_



## INSTRUCTIONS FOR CONFLICTS OF INTEREST QUESTIONNAIRE [Form CIQ]

Chapter 176 of the Texas Local Government Code requires vendors who wish to conduct business or be considered for business with a city to file a “conflict of interest questionnaire.” The Texas Ethics Commission (TEC) created the conflict of interest questionnaire (Form CIQ).

### **Who must complete and file CIQ form?**

Every vendor doing business with the City or seeking to do business with the City must complete Box 1 and sign and date in Box 4. Whether or not a conflict exists determines the other information to include on the form.

### **Who is a vendor?**

The term “vendor” includes a partnership, corporation or other legal entities, including those performing professional services. Partnerships or corporations act through individuals, but it is the partnership or corporation that is doing business with or seeking to do business with the City.

If the vendor seeking to do business with the City is a sole proprietorship, then just the name of the person who is the vendor is needed.

### **What triggers the requirement to file the Form CIQ?**

When a vendor (or an agent of the vendor) begins (1) contract discussions or negotiations with the city or (2) submits an application, quote, response to request for proposals or bids, or anything else that could result in an agreement (contract or purchase order) with the City, Form CIQ must be completed. Whether the vendor initiates the discussion or the City initiates the discussions, Form CIQ must be completed. The monetary amount or value of the contract/purchase does not matter. The contract or purchase may involve the sale or purchase of property, goods, or services with the City of Waco

### **When does a conflict requiring disclosure exist? What has to be revealed?**

- A vendor shall file a completed conflict of interest questionnaire if the vendor has a business relationship with the City of Waco and the vendor:
  - (1) has an employment or other business relationship with an officer of the City of Waco, or a family member of an officer, that results in taxable income exceeding **\$2,500** during the 12 month period preceding the date a contract/purchase is executed or a contract/purchase is being considered; or
  - (2) has given an officer of the City of Waco, or a family member of an officer, one or more gifts with the aggregate value of more than **\$100** in the 12 month period preceding the date a contract/purchase is executed or a contract/purchase is being considered
  - (3) has a family relationship with an officer of the City of Waco.

### **What family relationships create a conflict?**

A “family member” is a person related to another person within the first degree by consanguinity (blood) or affinity (marriage), as described by Subchapter B, Chapter 573, Texas Government Code. The ending of a marriage by divorce or the death of a spouse ends relationships by affinity created by that marriage unless a child of that marriage is living, in which case the marriage is considered to continue as long as a child of that marriage lives.

“Family relationship” means a relationship between a person and another person within the third degree by consanguinity or the second degree by affinity, as those terms are defined by Subchapter B, Chapter 573, Texas Government Code.

### **Who are officers of the City of Waco?**

Officers are the members of the Waco City Council, the City Manager, and any agent or employee who exercises discretion in the planning, recommending, selecting, or contracting with a vendor. An agent may include engineers and architects, as well as others, who assist the City is making a decision on some contract or purchase.

### **When must a vendor file the conflict of interest questionnaire?**

No later than seven days after the date the vendor: (a) begins contract discussions or negotiations with the city, or (b) submits an application or response to a request for proposals or bids, correspondence, or another writing related to a potential agreement with a city, or (c) becomes aware of an employment or other business relationship with an officer or family member of the officer that the vendor (i) has made one or more gifts of more than \$100 or (ii) has a family relationship with.

### **How do I go about filling out the Conflict of Interest Questionnaire form?**

Section 1: Fill in the full name of the **person or company** who is trying to do business with the City. If the “person” is a corporation, partnership, etc., then it is the name of that corporation, partnership, etc., that is required on Form CIQ. If a sole proprietorship, then just the name of the individual is needed. If the “person” is an individual acting as an agent for some other person or a company, then it is the agent’s name. **Any time an agent is involved, two FORM CIQs must be completed and submitted:** one for the agent, and one for the person or company that the agent acted for. The agent’s FORM CIQ must note the vendor that the agent acted for.

Section 2: Check box if the form is an update to a form previously completed. Updates are required by the 7th business day after an event that makes a statement in a previously filed questionnaire incomplete or inaccurate. Updates are also required by September 1 of each year in which the person submits a proposal, bid or response to the City of Waco or begins contract discussions or negotiations with the City.

Section 3: Complete by listing the name of the City of Waco officer with whom there is an affiliation to or business relationship and check the “Yes” or “No” box in Section 3 A, B, or C. If there is more than one City officer with whom there is an affiliation or business relationship, a separate form should be completed for each officer.

3.A: State whether the officer named on the form receives or is likely to receive taxable income, other than investment income, from the vendor filing the questionnaire.

3.B: State whether the vendor receives or is likely to receive taxable income, other than investment income, from or at the direction of the officer named on the form AND the taxable income is not received from the City.

3.C: State whether the filer is employed by a corporation or other business entity with which the City officer serves as an officer or director or holds an ownership interest of 1% or more.

3.D: Describe each employment or business relationship with the local government officer named on the form.

Section 4. Person completing form must date and sign the form. If the form is being completed for a corporation, partnerships, etc., the person signing should be someone who is authorized to act on behalf of the corporation, partnership, etc.

**A signature is required in box #4 regardless of any other entry on the form.**

**A copy of Chapter 176 of the Texas Local Government Code can be found at:**

**<http://www.statutes.legis.state.tx.us/SOTWDocs/LG/html/LG.176.htm>**

# CONFLICT OF INTEREST QUESTIONNAIRE

For vendor doing business with local governmental entity

## FORM CIQ

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

### OFFICE USE ONLY

Date Received

This includes the vendor name even if a conflict does not exist

1 Name of vendor who has a business relationship with local governmental entity.

Insert name of vendor seeking to do business with the City of Waco

2  Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

3 Name of local government officer about whom the information in this section is being disclosed.

Insert name of officer with whom there is business, employment or family relationship. If no conflict, insert N/A.

Name of Officer

This section (item 3 including subparts A, B, C, & D) must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes  No

Complete A-C if a conflict exist

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes  No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more?

Yes  No

D. Describe each employment or business and family relationship with the local government officer named in this section.

Identify and describe the relationship, if applicable

4

Signature required -- so sign and date, even if no conflict

Signature of vendor doing business with the governmental entity

Date

# CONFLICT OF INTEREST QUESTIONNAIRE

# FORM CIQ

For vendor doing business with local governmental entity

This questionnaire reflects changes made to the law by H.B. 23, 84th Leg., Regular Session.

This questionnaire is being filed in accordance with Chapter 176, Local Government Code, by a vendor who has a business relationship as defined by Section 176.001(1-a) with a local governmental entity and the vendor meets requirements under Section 176.006(a).

By law this questionnaire must be filed with the records administrator of the local governmental entity not later than the 7th business day after the date the vendor becomes aware of facts that require the statement to be filed. See Section 176.006(a-1), Local Government Code.

A vendor commits an offense if the vendor knowingly violates Section 176.006, Local Government Code. An offense under this section is a misdemeanor.

## OFFICE USE ONLY

Date Received

**1** Name of vendor who has a business relationship with local governmental entity.

**2**  Check this box if you are filing an update to a previously filed questionnaire.

(The law requires that you file an updated completed questionnaire with the appropriate filing authority not later than the 7th business day after the date on which you became aware that the originally filed questionnaire was incomplete or inaccurate.)

**3** Name of local government officer about whom the information in this section is being disclosed.

\_\_\_\_\_  
Name of Officer

This section (item 3 including subparts A, B, C, & D) must be completed for each officer with whom the vendor has an employment or other business relationship as defined by Section 176.001(1-a), Local Government Code. Attach additional pages to this Form CIQ as necessary.

A. Is the local government officer named in this section receiving or likely to receive taxable income, other than investment income, from the vendor?

Yes       No

B. Is the vendor receiving or likely to receive taxable income, other than investment income, from or at the direction of the local government officer named in this section AND the taxable income is not received from the local governmental entity?

Yes       No

C. Is the filer of this questionnaire employed by a corporation or other business entity with respect to which the local government officer serves as an officer or director, or holds an ownership interest of one percent or more?

Yes       No

D. Describe each employment or business and family relationship with the local government officer named in this section.

**4**

\_\_\_\_\_  
Signature of vendor doing business with the governmental entity

\_\_\_\_\_  
Date



**DISCLOSURE OF RELATIONS WITH  
CITY COUNCIL MEMBER, OFFICER, OR EMPLOYEE OF CITY OF WACO**

Failure to fully and truthfully disclose the information required by this form may result in the termination of any business the City is now doing with the entity listed below and/or could impact future dealings.

1. Name of Entity/Business/Person doing business with City: \_\_\_\_\_

Is the above entity: **(Check one)**

- A corporation       A partnership       A sole proprietorship or an individual  
 Other (specify): \_\_\_\_\_

**Check all applicable boxes.**

2. Is any person involved as an owner, principal, or manager of name listed in #1 related to or financially dependent on Council member, officer, or employee of the City of Waco?

- NO -- there is no such relationship between Entity/Business/Person and the City of Waco.  
 YES, a person who is a/an     owner,  principal, or  manager of this entity/business/person

is: **(Check all applicable boxes below)**

- related to by blood or marriage\*    and/or     a member of the same household as  
and / or     financially dependent upon\*\*    and/or     financially supporting\*\*  
to a City of Waco     City Council member,     officer    or     employee.

\* As used here, "related to" means a spouse, child or child's spouse, and parent or parent's spouse. It also includes a former spouse if a child of that marriage is living (the marriage is considered to continue as long as a child of that marriage lives).

\*\* As used herein, "financially dependent upon" and "financially supporting" refers to situations in which monetary assistance—including for lodging, food, education, and debt payments—is provided by owner, principal or manger of #1 to Council member, officer or employee of City of Waco, or that Council member, officer or employee of City of Waco provides to owner, principal or manger of #1.

If YES, provide (a) the name of owner, principal, or manager, **and** (b) the name of the City Council member, officer or employee (include the department the City officer or employee works for, if known), **and** (c) if a relationship by marriage or by blood/kinship exists. (Use back of sheet if more space is needed)

(a) Name of owner, principal, or manager	(b) Name of Council member, officer or employee & department	(c) What is relationship or household arrangement

3. Is a current City Council member or City employee involved with the name listed in #1 as an owner, principal, manager, or employee, or employed as a contractor for name listed in #1?

- NO (no person involved/working for Entity/Business/Person is Council member, officer or employee of the City).  
 YES, a person is **(Check all applicable boxes)**

- (a) a current City of Waco     City Council member,     officer or     employee ,  
(b) and is     an owner,  a principal, or  a manager of the entity/business/person listed in #1,  
or     an employee or     an independent contractor of the entity/business/person listed in #1.

If YES, provide the name of owner, principal, manager, employee or independent contractor who is a City Council member, officer or employee. Include the department the City officer or employee works for, if known.

\_\_\_\_\_  
\_\_\_\_\_

Signature: \_\_\_\_\_ Phone #: \_\_\_\_\_ Date: \_\_\_\_\_

Print Name: \_\_\_\_\_ Print Title: \_\_\_\_\_



**NON-COLLUSION AFFIDAVIT**

STATE OF TEXAS                   §  
  §  
COUNTY OF \_\_\_\_\_ §

By the signature below, the signatory for the bidder certifies that neither he nor the firm, corporation, partnership or institution represented by the signatory or anyone acting for the firm bidding this project has violated the antitrust laws of this State, codified at Section 15.01, *et seq.*, Texas Business and Commerce Code, or the Federal antitrust laws, nor communicated directly or indirectly the bid made to any competitor or any other person engaged in the same line of business, nor has the signatory or anyone acting for the firm, corporation or institution submitting a bid committed any other act of collusion related to the development and submission of this bid proposal.

Signature:

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

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

THE STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

Before me, the undersigned authority, on this day personally appeared \_\_\_\_\_ (the person who signed above), known to me to be the persons whose names are subscribed to the foregoing instruments, and acknowledged to me that they executed same for the purposes and considerations therein expressed.

GIVEN UNDER MY HAND AND SEAL OF OFFICE on this \_\_\_\_\_ day of \_\_\_\_\_ A.D., 20\_\_\_\_.

(Seal)

\_\_\_\_\_  
Notary Public Signature



**Texas Public Information Act  
Steps To Assert Information Confidential or Proprietary**

**All proposals, data, and information submitted to the City of Waco are subject to release under the Texas Public Information Act (“Act”) unless exempt from release under the Act. You are not encouraged to submit data and/or information that you consider to be confidential or proprietary unless it is absolutely required to understand and evaluate your submission.**

**On each page where confidential or proprietary information appears, you must label the confidential or proprietary information. Do not label every page of your submission as confidential as there are pages (such as the certification forms and bid sheet with pricing) that are not confidential. It is recommended that each page that contains either confidential or proprietary information be printed on colored paper (such as yellow or pink paper). At a minimum the pages where the confidential information appears should be labeled and the information you consider confidential or proprietary clearly marked.**

**Failure to label the actual pages on which information considered confidential appears will be considered as a waiver of confidential or proprietary rights in the information.**

**In the event a request for public information is filed with the City which involves your submission, you will be notified by the City of the request so that you have an opportunity to present your reasons for claims of confidentiality to the Texas Attorney General.**

**In signing this form, I acknowledge that I have read the above and further state:**

The proposal/bid submitted to the City **contains NO confidential information** and may be released to the public if required under the Texas Public Information Act.

The proposal/bid submitted **contains confidential information** which is labeled and which may be found on the following pages: \_\_\_\_\_

\_\_\_\_\_ and any information contained on page numbers not listed above may be released to the public if required under the Texas Public Information Act.

Vendor/Proposer Submitting: \_\_\_\_\_

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

Print Name: \_\_\_\_\_ Print Title: \_\_\_\_\_

**APPENDIX C**  
**Purchase and Sale Agreement**

## PURCHASE AND SALE AGREEMENT FOR REAL PROPERTY

**THIS PURCHASE AND SALE AGREEMENT** (this "**Agreement**") is entered into as of \_\_\_\_\_, 201\_\_\_\_, between \_\_\_\_\_ ("Buyer") and **THE CITY OF WACO, TEXAS** ("Seller").

In consideration of the mutual covenants set forth herein and in consideration of the earnest money deposit herein called for, whose receipt and sufficiency are acknowledged by Seller, the parties agree as follows:

Section 1. **Sale and Purchase Agreement.** Seller shall sell, convey, and assign to Buyer, and Buyer shall purchase and accept from Seller, for the Purchase Price (defined below) and on and subject to the terms and conditions herein set forth, the real property situated in McLennan County, Texas, located at \_\_\_\_\_ (address) described as \_\_\_\_\_ (legal description), together with all improvements thereon and all rights and interests appurtenant thereto, including all of Seller's right, title, and interest in and to adjacent streets, alleys, rights-of-way, and any adjacent strips and gores of real estate (the "**Property**").

Except as expressly provided elsewhere in this Agreement, Buyer is acquiring the Property "AS IS, WHERE IS, WITH ALL FAULTS OF ANY KIND OR NATURE WHATSOEVER". Buyer is purchasing the Property under the express understanding that Seller makes no express or implied warranty or representation of any kind or nature whatsoever regarding the Property except as provided in this Agreement. Buyer acknowledges and declares that it has inspected the Property and is buying the Property based upon its own examination and judgment. Buyer acknowledges that neither Seller, nor any person acting on behalf of Seller, has made any representations or warranties with respect to the Property except as provided in this Agreement. Buyer further acknowledges that any and all due diligence materials (if any) that have been provided by Seller has been provided without any representation, expressed or implied, as to their content, suitability for any purpose, accuracy, truthfulness or completeness, and Buyer agrees and acknowledges that it will not have any recourse against Seller in the event of any errors or omissions in any such due diligence materials.

Section 2. **Purchase Price.** The price for which Seller shall sell, convey, and assign the Property to Buyer, and which Buyer shall pay to Seller, is \_\_\_\_\_ ("**Purchase Price**").

Section 3. **Earnest Money.** Within five (5) business days after the execution hereof, Buyer shall deliver to \_\_\_\_\_ ("**Title Company**"), funds in the amount of \$\_\_\_\_\_ (minimum 5% of Sale Price), which Title Company shall immediately deposit for collection. As used in this Agreement, the term "**Earnest Money**" shall mean the amount so deposited by Buyer, together with all interest earned thereon while in the custody of Title Company. Seller and Buyer stipulate that Buyer's agreement to so deposit the Earnest Money is sufficient consideration to support this Agreement notwithstanding Buyer's rights under Section 6; however, if Buyer does not timely deposit the Earnest Money, then this Agreement shall terminate and be of no further force or effect.

Section 4. **Delivery of Information by Seller.**

Within thirty (30) days after the date of this Agreement, Seller, at Buyer's expense, shall deliver to Buyer copies of all engineering and technical reports in the possession of Seller or its representatives that concern the Property, including without limitation soils testing reports and reports of environmental or hazardous waste inspections or surveys.

Section 5. **Right of Inspection; Contingency Period.**

(a) Seller shall afford Buyer and its representatives the continuing right through the Closing Date to enter on and inspect the Property to conduct soil tests, environmental studies, and other inspections to determine whether the Property is suitable for Buyer's proposed development.

(b) Buyer shall have a period of                      days (max 60 days) after the date of this Agreement (the "Contingency Period") in which to obtain or conduct a Phase 1 environmental review, asbestos inspection, and on-site review of facilities to verify condition of the Property, and to determine the status of zoning and other governmental regulations affecting the Property. If during the Contingency Period Buyer determines, in its sole discretion, that the Property is not suitable for its proposed development, or if Buyer is unable to obtain financing satisfactory to it in its sole discretion, then Buyer shall have the right to terminate this Agreement in accordance with Section 10.(b) by giving written notice to Seller at any time prior to the expiration of the Contingency Period. If Buyer does not so terminate this Agreement by the end of the Contingency Period, or if prior thereto Buyer waives its right to do so, then Buyer shall have no further right to terminate this Agreement under this Section 5.(b).

(c) Buyer, at buyer's expense, shall obtain a survey, (the "Survey") consisting of a plat and field notes prepared by a licensed surveyor acceptable to Buyer and Title Company, which Survey shall (1) reflect the actual dimensions of, and the gross area and Net Area within, the Property, the location of any easements, rights-of-way, setback lines, encroachments, or overlaps thereon or there over, and the outside boundary lines of any improvements, (2) identify by recording reference all easements, rights-of-way, setback lines, and other matters referred to in the Title Commitment, (3) include the surveyor's registered number and seal, the date the Survey was performed, and a certificate satisfactory to Buyer, (4) reflect that there is access to and from the Property from a publicly dedicated street or road, (5) be sufficient to cause the Title Company to delete (except for "shortages in area") the printed exception for "discrepancies, conflicts or shortages in area or boundary lines, or encroachments, or any overlapping of improvements" in the owner policy of title insurance to be delivered pursuant to Section 8, (6) reflect any area within the Property that has been designated by the Federal Insurance Administration, the Army Corps of Engineers, or any other governmental agency or body as being subject to special or increased flooding hazards, and (7) in general, comply with the requirements of the Texas Society of Professional Surveyors for a Category A Condition II survey. For purposes of the property description to be included in the general warranty deed to be delivered pursuant to Section 8, the field notes prepared by the surveyor shall control any conflicts or inconsistencies with Exhibit A, and such field notes shall be incorporated herein by this reference upon their completion and approval by Buyer.

Section 6. **Title.**

Buyer shall be entitled to obtain, at Buyer's own election and expense, a policy of title insurance ("Title Policy") issued Title Company, dated at or after closing and insuring against loss under the provisions of the Title Policy, subject to the promulgated exclusions (including existing building and zoning ordinances) and the following exceptions:

- (1) The standard printed exception for standby fees, taxes and assessments;
- (2) Reservations or exceptions otherwise permitted by this Agreement or as may be approved by such Buyer in writing;
- (3) The standard printed exception as to marital rights;
- (4) The standard printed exception as to waters, tidelands, beaches, streams, and related matters; and
- (5) The standard printed exception as to discrepancies, conflicts, shortages in area or boundary lines, encroachments or protrusions, or overlapping improvements. Buyer may have the exception amended to read, "shortages in the areas, at the Buyer's own expense."

Buyer understands and acknowledges that the Property will be conveyed by deed without warranty, that conveyance of the Property by deed without warranty may affect Buyer's ability to obtain a Title Policy, and it is Buyer's duty and obligation to confirm with the Title Company the availability of a Title Policy on the Property it is acquiring prior to the expiration of the Contingency Period (defined below).

The Buyer may request a commitment for title insurance for the Property the Buyer is acquiring (the "Commitment") and, at Buyer's expense, legible copies of restrictive covenants and documents evidencing exceptions in the Commitment (the "Exception Documents").

Buyer shall have the right, at any time during the Contingency Period, to object in writing to any liens, encumbrances, and other matters reflected on the Title Commitment or Survey. All such matters to which Buyer so objects shall be "**Non-Permitted Encumbrances.**" If no such notice of objection is given during the Contingency Period, all matters reflected by the Survey and Title Commitment, other than liens, shall be "**Permitted Encumbrances.**"

Seller shall have the right, but not the obligation, at its cost, to cure or remove all Non-Permitted Encumbrances and give Buyer written notice thereof within twenty (20) days after the Contingency Period expires. If Seller does not timely cause all of the Non-Permitted Encumbrances to be removed or cured, and timely written notice thereof to be given to Buyer, then Buyer may either (a) terminate this Agreement in accordance with Section 10.(b) by delivering notice to Seller within twenty (20) days after the end of the Contingency Period, or (b) purchase the Property subject to the Non-Permitted Encumbrances in which case, such Non-Permitted Encumbrances shall be Permitted Encumbrances.

Section 7. **Seller's Representations, Warranties, and Covenants.** Seller represents and warrants to, and covenants with, Buyer that:

(a) Seller has full right, power, and authority to execute and deliver this Agreement and to consummate the purchase and sale transactions provided for herein without obtaining any further consents or approvals from, or the taking of any other actions with respect to, any third parties. This Agreement, when executed and delivered by Seller and Buyer, will constitute the valid and binding agreement of Seller, enforceable against Seller in accordance with its terms.

(b) To the best of Seller's knowledge, the Property is not located within an area that has been designated by the Federal Insurance Administration, the Army Corps of Engineers, or any other governmental agency or body as being subject to special or increased flooding hazards.

(c) There are no actions, suits, claims, assessments, or proceedings pending or, to the knowledge of Seller, threatened that could adversely affect the ownership, operation, or maintenance of the Property or Seller's ability to perform hereunder.

(d) All bills and other payments due with respect to the ownership, operation, and maintenance of the Property have been paid or will be paid prior to Closing in the ordinary course of business.

(e) From the date hereof until the Closing Date, Seller shall not: (1) commit or permit to be committed any waste to the Property; or (2) enter into any agreement or instrument or take any action that would encumber the Property after Closing, that would bind Buyer or the Property after Closing, or that would be outside the normal scope of maintaining and operating the Property.

(f) To the best of Seller's knowledge, the Property has not been the site of any activity that would violate any past or present environmental law or regulation of any governmental body or agency having jurisdiction over the Property. Specifically, but without limitation, (1) solid waste, petroleum, or petroleum products have not been handled or stored on the Property such that they may have leaked or spilled onto the Property or contaminated the Property, (2) there is no on-site contamination resulting from activities on the Property or adjacent tracts, and (3) the Property contains no "hazardous materials" which shall mean any petroleum products, flammables, explosives, radioactive materials, asbestos, radon, or other hazardous waste including without limitation substances defined as "hazardous substances", "hazardous materials", or "toxic substances" in the Comprehensive Environmental Response, Compensation and Liability Act of 1980; the Hazardous Materials Transportation Act; and the Resources Conservation and Recovery Act, and any other material or substance whose use, storage, or disposal is regulated by law.

(g) The current zoning classification of the Property is                      and there are no proceedings pending or contemplated to alter such zoning classification.

If (A) any of Seller's representations and warranties set forth in this Section 7 are untrue in any material respect, or (B) at any time at or before Closing there is any material change with respect to the matters represented and warranted by Seller pursuant to this Section 7, then Seller

shall give Buyer prompt written notice thereof, and Buyer shall have the right to terminate this Agreement in accordance with Section 10.(b) by delivering notice to Seller at any time at or before the Closing. All of Seller's representations and warranties shall survive the Closing; provided, however, that Buyer may not maintain an action for breach of such representations and warranties unless it shall have given Seller written notice of such breach in reasonable detail not later than a date which is two (2) years from the Closing Date.

Section 8. **Closing.** The closing (the "**Closing**") of the sale of the Property by Seller to Buyer shall occur on a mutually agreeable date and time on or before [REDACTED] (the "**Closing Date**"), in the offices of Title Company. At the Closing the following, which are mutually concurrent conditions, shall occur:

(a) Buyer, at its expense, shall deliver or cause to be delivered to Seller the following:

(1) Evidence satisfactory to Seller and Title Company that the person executing the Closing documents on behalf of Buyer has full right, power, and authority to do so.

(b) Seller, at its expense, shall deliver or cause to be delivered to Buyer the following:

(1) Deed Without Warranty in the form that is agreeable to the Buyer, fully executed and acknowledged by Seller, conveying the Property to Buyer, subject only to the Permitted Encumbrances;

(2) Evidence satisfactory to Buyer and the Title Company that the persons executing and delivering the Closing documents on behalf of Seller have full right, power and authority to do so;

(3) Certificate executed by Seller stating that, as of the Closing Date, each of Seller's representations and warranties set forth in Section 7 is true and correct;

(4) Certificate in the form of Exhibit B meeting the requirements of Section 1445 of the Internal Revenue Code of 1986, executed and sworn to by Seller;

(5) Certificates from the tax collectors for the City of Waco, County of McLennan, Waco Independent School District, or any other political subdivisions that assesses property taxes showing that (i) no taxes, interest, penalties or costs remain unpaid with respect to the Property for any time prior to the Closing Date and (ii) the Property has not been (or is not being) assessed on a productive value basis rather than a fair market value basis; and

(6) Such other instruments as are customarily executed in Texas to effectuate the conveyance of property similar to the Property, with the effect that, after the Closing, Buyer will have succeeded to all of the rights, titles, and interests of Seller

related to the Property and Seller will no longer have any rights, titles, or interests in and to the Property, other than pursuant to the liens securing payment of the Note.

(c) All normal and customarily proratable items, including without limitation real estate and personal property taxes, utility bills, and insurance premiums shall be prorated as of the Closing Date, Seller being charged and credited for all of same up to such date and Buyer being charged and credited for all of same on and after such date. If the actual amounts to be prorated are not known as of the Closing Date, the prorations shall be made on the basis of the best evidence then available, and thereafter, when actual figures are received, a cash settlement will be made between Seller and Buyer. Notwithstanding the foregoing, there shall not be prorated, and Seller shall be solely responsible for and shall indemnify Buyer from, any subsequent tax assessments of any type for prior years due to change in land usage or ownership, including without limitation any taxes imposed under Sections 23.55 and 23.76 of the Texas Property Tax Code pertaining to land previously appraised for usage as timber land or agricultural land.

(d) Title Company shall return the Earnest Money to Buyer or, at Buyer's option, apply the Earnest Money to the Purchase Price.

(e) Upon completion of the Closing, Seller shall deliver to Buyer possession of the Property free and clear of all tenancies of every kind and parties in possession, in the same condition as on the date hereof, normal wear only excepted.

(f) Buyer shall pay half of escrow fees, any document preparation, and additional closing and filing fees charged by the Title Company.

Section 9. **Destruction, Damage, or Taking Before Closing.** If, before Closing, all or any part of the Property is destroyed or damaged, or becomes subject to condemnation or eminent domain proceedings, then Seller shall promptly notify Buyer thereof. Buyer may elect to proceed with the Closing (subject to the other provisions of this Agreement) by delivering notice thereof to Seller within five (5) business days of receipt of Seller's notice respecting the damage, destruction, or taking, but Buyer shall be entitled to all insurance proceeds or condemnation awards payable as a result of such damage or taking and, to the extent the same may be necessary or appropriate, Seller shall assign to Buyer at Closing Seller's rights to such proceeds or awards. If, within five (5) business days of receipt of Seller's notice respecting the damage, destruction, or taking, Buyer notifies Seller of its intent to terminate this Agreement, or if Buyer gives no notice within such period, then Buyer shall be deemed to have terminated this Agreement pursuant to Section 10.(b).

Section 10. **Termination and Remedies.**

(a) If Buyer fails to consummate the purchase of the Property pursuant to this Agreement for any reason other than termination hereof pursuant to a right granted to Buyer in Sections 5, 6, 7, and 10, then Seller, as its sole remedy, shall have the right to terminate this Agreement by notifying Buyer thereof, in which event Title Company shall deliver the Earnest

Money to Seller as liquidated damages, whereupon neither Buyer nor Seller shall have any further rights or obligations hereunder.

(b) If Buyer terminates this Agreement pursuant to Section 5, 6, 7, or 10, then Title Company shall return the Earnest Money to Buyer, whereupon neither party hereto shall have any further rights or obligations hereunder.

(c) If Seller fails to consummate the sale of the Property pursuant to this Agreement for any reason other than Buyer's failure to perform its obligations hereunder or termination hereof by Buyer in accordance with Section 10.(b), then Buyer shall have the right to: (A) terminate this Agreement by notifying Seller thereof, in which case Title Company shall return the Earnest Money to Buyer and neither party hereto shall have any further rights or obligations hereunder; (B) enforce specific performance of the obligations of Seller hereunder; or (C) seek all other rights, recourses, or remedies available to Buyer whether hereunder, at law, or in equity, said rights, remedies, and recourses being cumulative.

(d) The provision for payment of liquidated damages in Section 10.(a) has been included because, in the event of a breach by Buyer, the actual damages to be incurred by Seller can reasonably expected to approximate the amount of liquidated damages called for herein and because the actual amount of such damages would be difficult if not impossible to measure accurately.

Section 11. **Broker Fee.** Buyer shall pay any broker or real estate agent's sales commission or fee.

Section 12. **Notices.** All notices provided or permitted to be given under this Agreement must be in writing and may be served by depositing same in the United States mail, addressed to the party to be notified, postage prepaid and registered or certified with return receipt requested; by delivering the same in person to such party; or by facsimile copy transmission. Notice given in accordance herewith shall be effective upon receipt at the address of the addressee. For purposes of notice, the addresses of the parties shall be as follows:

If to Seller, to:      name  
   address  
   address

If to Buyer, to:      The City of Waco  
   City Manager's Office  
   Attention: \_\_\_\_\_  
   P.O. Box 2570  
   Waco, Texas 76702-2570

Either party hereto may change its address for notice by giving three (3) days prior written notice thereof to the other party.

Section 13. **Assigns; Beneficiaries.** This Agreement shall inure to the benefit of and be binding on the parties hereto and their respective heirs, legal representatives, successors, and assigns. This Agreement is for the sole benefit of Seller and Buyer, and no third party is intended to be a beneficiary of this Agreement.

Section 14. **Governing Law; Venue.** This Agreement shall be governed and construed in accordance with the laws of the State of Texas. Venue on any dispute arising hereunder shall be at McLennan County, Texas.

Section 15. **Time.** Time is of the essence in this Agreement. The parties require strict compliance with the times for performance. If the last day to perform under a provision of this Agreement falls on a Saturday, Sunday, or legal holiday, the time for performance is extended until the end of the next day which is not a Saturday, Sunday, or legal holiday.

Section 16. **Contingent on Council approval.** This Agreement is contingent upon the City Council approving the Agreement and authorizing the City Manager to execute the Closing Documents.

Section 17. **Entire Agreement.** This Agreement is the entire agreement between Seller and Buyer concerning the sale of the Property, and no modification hereof or subsequent agreement relative to the subject matter hereof shall be binding on either party unless reduced to writing and signed by the party to be bound. All Exhibits attached hereto are incorporated herein by this reference for all purposes.

Executed as of the date first set forth above.

**SELLER:**

**Name**

By: \_\_\_\_\_  
**name**

**BUYER:**

THE CITY OF WACO, TEXAS

By: \_\_\_\_\_  
Dale A. Fisseler, P.E., City Manager

Schedule of Exhibits

A - Description of Property

**EXHIBIT A**

**Property Description**

**EXHIBIT B**

**CERTIFICATION**

Section 1445 of the Internal Revenue Code provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the transferee that withholding of tax is not required upon the disposition of a U.S. real property interest by Veterans of Foreign Wars of the U.S. Waco Post#2148 (“**Transferor**”), the undersigned hereby certifies the following on behalf of Transferor.

1 Transferor is not a foreign corporation, foreign partnership, foreign trust, or foreign estate (as those terms are defined in the Internal Revenue Code and Income Tax Regulations);

2 Transferor’s U.S. employer identification number is \_\_\_\_\_; and

3 Transferor’s office address is \_\_\_\_\_.

Transferor understands that this certification may be disclosed to the Internal Revenue Service by transferee and that any false statement contained herein could be punished by fine, imprisonment, or both.

Under penalties of perjury I declare that I have examined this certification and to the best of my knowledge and belief it is true, correct and complete, and I further declare that I have authority to sign this document on behalf of Transferor.

By: \_\_\_\_\_  
Seller’s name

Source CFR, Section 1.1445-2T(b)(2)(iii)(B)