

**INVITATION FOR SEALED BIDS:
PROPOSED SALE OF IMPROVED REAL PROPERTY**

Property Known as
5948 Spring Street, Austell, Georgia

Date of Property Tour: October 20, 2023 from 1:00 p.m. to 3:00 p.m.

Date of Bid Opening: October 27, 2023

Time of Bid Opening: 3:00 p.m.

Location of Bid Opening: Austell City Hall
Council Chambers
2716 Broad Street
Austell, GA 30106

Bid Contact: Rachel Yarbrough
Finance Department
Austell City Hall
2716 Broad Street
Austell, GA 30106
rachel@austellga.gov

I. Bidder’s Instructions

In accordance with O.C.G.A. § 36-37-6(a), the City of Austell, Georgia (the “City”) invites members of the general public to submit sealed bids for the purchase of City-owned improved real property located at 5948 Spring Street, Austell, Georgia (the “Property”).

A. Legal Description of Property

All that tract or parcel of land lying and being in Land Lot 92 of the 18th District, 2nd Section, Cobb County, Georgia, and being more particularly described as follows:

BEGINNING at a point located at the intersection of the Southerly side of Rose Hill Street (30 foot right of way) and the Westerly side of Spring Street (50 foot right of way); running thence South 01 degrees 52 minutes 57 seconds West and along the Westerly side of Spring Street a distance of 73.5 feet to a point marked by an iron pin; running thence South 89 degrees 57 minutes 05 seconds west a distance of 92.71 feet to a point; running thence North 88 degrees 15 minutes 13 seconds West a distance of 82.5 feet to a point marked by an iron pin; running thence North 00 degrees 19 minutes 13 seconds West a distance of 81.30 feet to a pin marked by an iron pin located at the Southerly side of Rose Hill Street; running thence South 86 degrees 41 minutes 54 seconds East along the Southerly side of Rose Hill Street a distance of 178.34 feet to a point marked by an iron pin located at the intersection of the Southerly side of Rose Hill Street and the Westerly side of Spring Street, same being the point of BEGINNING. All as shown by that plat of survey prepared by George Willis Crusselle, RLS, dated March 29, 1993; said plat being made a part hereof by this reference thereto. Being the same property conveyed in Limited Warranty Deed dated 01/04/2008, at Deed Book 14572, Page 4183, Cobb County, Georgia Records, from Regions Bank to Stephen McAllister.

B. General Information

i. The Invitation for Sealed Bids is available from Rachel Yarbrough, Finance Department, Austell City Hall, 2716 Broad Street, Austell, GA 30106.

ii. Inquiries regarding bid requirements shall be directed in writing to:

Rachel Yarbrough
Finance Department
Austell City Hall
2716 Broad Street
Austell, GA 30106
rachel@austellga.gov

C. Terms and Conditions Applicable to Sale

- i. the Property will be sold as-is, where is, and with all faults, with no representations or warranties;
- ii. the minimum bid that will be accepted is \$300,000.00;
- iii. the Property will be sold subject to all zoning conditions and all matters of record, including claims, rights of way, restrictions, and encroachments;
- iv. the Property will be sold subject to covenants which will survive the closing, including the condition that all improvements on the Property will be preserved after closing and not torn down;
- v. if a bid is accepted, funds must be deposited with the City's closing attorney by federally insured wire transfer within five days of the acceptance of the bid;
- vi. if a bid is accepted, the Property will be conveyed by Quitclaim Deed;
- vii. all closing costs, including the City's closing attorney's fees, shall be borne by the successful bidder and shall be paid at Closing.

D. Property Tour

The City will open the Property from 1:00 p.m. until 3:00 p.m. on Friday, October 20, 2023 during which prospective bidders may view the Property. A representative of the City will be on hand to answer questions concerning the Property. Note, however, that verbal responses to questions posed shall not bind the City. Written questions must be submitted per paragraph E below. The official position of the City shall only be reflected in this Invitation for Sealed Bids and in any written addenda thereto.

E. Questions and Answers

Any questions regarding the bid documents or the bid process that are not answered in this Invitation for Sealed Bids shall be directed in writing to Rachel Yarbrough no later than 12:00 p.m. on October 23, 2023. Inquiries may be mailed, hand delivered, or e-mailed using the contact information listed on the first page of this Invitation for Sealed Bids. Telephone inquiries will not be accepted.

No verbal response to any inquiry will bind the City. Only the City's written communications (the Invitation for Sealed Bids and Answers to Bid Inquiries) constitute an official response.

F. Preparation and Submission of Bids

Bidders should submit one (1) original bid and it must be submitted in accordance with the following instructions:

- i. Include in the bid:
 - a. Bid Form (bidders must use the form attached and include a proposed use of the Property in keeping with the character of the neighborhood)
 - b. Executed Purchase and Sale Agreement (bidders must use the form attached)
 - c. Evidence of Authority to sign (when applicable)
- ii. Documents shall be signed and dated in blue ink. All blank spaces must be typed or handwritten in blue ink. All dollar amounts must be in both words and figures. In the event of a discrepancy, bid amounts written in words shall prevail over the amount written in figures. Any corrections to any entry must be lined out and initialed by the Bidder. The use of correction tape or fluids is prohibited.
- iii. In cases where the Bidder is a corporation, limited liability company, partnership, or other entity, bids shall be signed by an officer or principal of the Bidder with the authority to execute a Purchase and Sale Agreement. Evidence of the signatory's authority to sign shall be attached to the Bid submittal, together with (i) a copy of LLC certification of organization and operating agreement or resolution showing the signer's authority to sign and bind the Bidder, (ii) a copy of the certificate of incorporation of the corporate Bidder and a corporate resolution designating officers with authority to sign and bind such corporate Bidder; or (iii) for other types of entities, appropriate documentation evidencing authority to sign.
- iv. Envelopes containing bids must be sealed and clearly marked with the Bidder's name and address and the following identification: "Bid for Real Estate – 5948 Spring Street."
- v. Bids shall be addressed and delivered to:

Rachel Yarbrough
Finance Department
Austell City Hall
2716 Broad Street
Austell, GA 30106

G. Withdrawal of Bids

Bids may not be withdrawn once they have been received and opened by the City.

H. Bid Opening

Bids shall be opened publicly at 3:00 p.m. on Friday, October 27, 2023 at Austell City Hall, Council Chambers, 2716 Broad Street, Austell, GA 30106. The name of each Bidder and the amount of each bid shall be read aloud.

Any bid received after 3:00 p.m. on October 27, 2023 shall not be considered. Bids must be mailed or delivered to Rachel Yarbrough at 2716 Broad Street, Austell, GA 30106. Bids submitted by fax or email will not be accepted. It shall be the sole responsibility of the bidder to have its bid delivered to Rachel Yarbrough at 2716 Broad Street, Austell, GA 30106 on or before the stated date and time. If a bid is sent by U.S. Mail, the bidder shall be responsible for its timely delivery. Bids delayed by mail will not be considered, shall not be opened, and arrangements will be made for their return to the bidder upon the bidder's request and at the bidder's expense.

I. Right to Reject Bids and to Accept Contingent Bids

The City reserves the right to reject all bids or any bid that is non-responsive or not responsible to the Invitation for Sealed Bids, and to waive technicalities and informalities to award a contract that is in the best interest of the City. The City reserves the right and discretion to reject any and all bids, to re-advertise, or to abandon the sale. The City may also elect to contingently accept one or more bids so that in the case of the default of an apparent successful bidder, the City will accept the contingent bid.

J. Applicable Law

All applicable laws and regulations of the State of Georgia and ordinances and regulations of the City shall apply.

K. Basis of Award

The award shall be made in accordance with the provisions of this Invitation for Sealed Bids. The award shall be made to the most responsive and responsible bidder. In awarding the bid, the City reserves the right to take into consideration the proposed use of the Property, including whether such proposed use will preserve the existing improvements in a manner in keeping with

the neighborhood. All bids shall be rejected if they are deemed in the judgment of the City to be non-responsive to the Invitation for Sealed Bids.

i. For purposes of this paragraph, a “responsive bidder” is a bidder who has submitted evidence that satisfies the City that said bidder has the capacity to complete the purchase of the Property.

ii. For purposes of this paragraph, a “responsible bidder” is a bidder who has submitted a complete bid that includes all documents as set forth herein, without irregularities, exclusions, special conditions or alternatives unless specifically requested in the Invitation for Sealed Bids.

L. Notice of Award and Closing

Upon completion of the bid evaluation by the Mayor and Council, the City shall send the successful bidder a Notice of Award and request the preparation of a Quitclaim Deed and closing package by the closing attorney.

The successful bidder’s Purchase and Sale Agreement will be presented to the Mayor for countersignature. The City will then direct the closing attorney to provide instructions to the successful bidder in all matters related to the closing, including time and date of the closing and wiring instructions for depositing the funds.

Upon the completion of the transaction, the closing attorney, on behalf of the City, will distribute any documents and cause the deed to be recorded in the records of the Clerk of the Superior Court of Cobb County, Georgia.

M. The City’s Rights upon Failure of Successful Bidder to Close

The City may, as may be necessary, pursue its rights upon the failure of the successful bidder to close the transaction for which Notice of Award has been made. If for any reason the successful bidder fails to close within 60 calendar days of the Notice of Award, such failure shall be construed as default under the terms of the Purchase and Sale Agreement and Invitation for Sealed Bids. In the event of such default, the City may terminate the Purchase and Sale Agreement and retain the earnest money deposit.

After termination, the City may send a Notice of Award to the contingent bidder.

N. Successful Bidder's Rights upon Failure of City to Close

Subject to the City's rights to reject any and all bids and the provisions of this Invitation for Sealed Bids and the Purchase and Sale Agreement, the City shall close on the sale of the Property within 60 calendar days after the date of the Notice of Award to the successful bidder. Failure by the City to close within the 60-day period shall entitle the successful bidder to terminate the Purchase and Sale Agreement by giving written notice of such action to Rachel Yarbrough at 2716 Broad Street, Austell, GA 30106. Upon receipt of such written notice of refusal, the City shall cancel the transaction and direct the closing attorney to return all funds to the successful bidder. Termination of the Purchase and Sale Agreement shall be the successful bidder's sole remedy for such refusal to close. Neither the City nor the successful bidder shall be liable to any party in any respect as a result of such refusal to close the transaction under this circumstance.

II. Exhibits

Exhibit 1: Bid Form

Exhibit 2: Purchase and Sale Agreement

Exhibit 3: Legal Description

Exhibit 1 - Bid Form

**Sealed Bid for Proposed Purchase and Sale of Real Property:
5948 Spring Street, Austell, GA**

Bidder's Name:

My Bid to Purchase this property is \$ _____ (in numbers).

\$ _____ (in words).

My proposed use of the Property is: _____

In submitting this bid, the Bidder acknowledges the following:

- The minimum bid that will be accepted is \$300,000.00.
- Sale of the above-referenced Property will be to the highest responsive and responsible bidder. The City of Austell, Georgia (the "City") reserves the right to consider the proposed use of the Property, including whether the proposed use preserves the improvements in a manner in keeping with the character of the neighborhood.
- Bids may not be withdrawn once they have been received and opened by the City of Austell.
- The Property will be sold by Quitclaim Deed as-is, where is, and with all faults, with no representations or warranties, subject to all zoning conditions and all matters of record, including claims, rights of way, restrictions, and encroachments.
- Any and all due diligence and property inspections should be completed before the date of the bid opening; no provision is made for a due diligence period once bids have been opened.

- Funds shall be deposited by the successful Bidder in the form of wire transfer within five days of the acceptance of the bid.
- All closing costs, including the City of Austell’s closing attorney's fees, shall be borne by the successful Bidder and shall be paid at closing.
- The successful Bidder must close on the above-referenced Property in accordance with the terms and conditions of the Purchase and Sale Agreement and the Invitation for Sealed Bids.
- The Purchase and Sale Agreement shall contain covenants and obligations that shall survive the execution of the Quit Claim Deed and the closing of the above-referenced Property and that impose certain requirements upon the Bidder’s use of such Property.

Bidder’s Address: _____

Phone Number: _____ Email Address: _____

Bidder’s Signature: _____ Date: _____

Printed Name: _____

Title (if Bidder is a corporate entity): _____

Exhibit 2 – Purchase and Sale Agreement

**Sealed Bid for Proposed Sale of Real Property:
5948 Spring Street, Austell, GA**

THIS AGREEMENT, entered into this _____ day of _____, 2023, by and between City of Austell, Georgia (hereinafter referred to as "Seller"); and _____ (hereinafter referred to as "Purchaser").

1. PURCHASE AND SALE

Upon the terms and conditions hereinafter set forth, Seller agrees to sell and Purchaser agrees to purchase all that tract or parcel of land, with an existing building located thereon, located in Cobb County, Georgia, and having the following street address: 5948 Spring Street, Austell, GA, and being more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (hereinafter referred to as the "Property").

2. EARNEST MONEY

(a) Purchaser shall pay to 1499, Inc., a title insurance agency affiliated with the law firm of Moore Ingram Johnson & Steele, LLP, ("Escrow Agent") an Earnest Money deposit of Ten Thousand Dollars (\$10,000.00) (the "Earnest Money"), which may be paid simultaneously with the Purchase Price.

(b) At Closing, all Earnest Money shall be applied as part payment of the Purchase Price of the Property.

3. PURCHASE PRICE; CLOSING COSTS

(a) The Purchase Price for the Property to be paid by Purchaser to Seller at the Closing shall be the sum of _____ (\$_____). The Purchase Price shall be payable by wire transfer and shall be deposited with the Escrow Agent within five (5) days after the date of the City's Notice of Award. There are no contingencies for financing. If the Purchaser fails to deliver such funds within said five-day period, the City may, at its option, terminate this Agreement and send a Notice of Award to any contingent bidder.

(b) Purchaser shall pay all closing costs incident to the transaction contemplated herein, including the State of Georgia transfer tax on the quitclaim deed and Seller's attorneys' fees.

4. CLOSING

The Closing shall be held on or before sixty (60) days after the date of the Notice of Award issued to Purchaser by Seller. The exact time of Closing and the Closing Date shall be set by Seller upon notice to Purchaser. Closing shall be held at the offices of Moore Ingram Johnson & Steele, LLP, 326 Roswell Street, Marietta, Georgia 30060, or at such other place and time as Purchaser and Seller may agree upon in writing.

5. CONDITIONS TO CLOSING.

(a) The Property shall be conveyed by quitclaim deed AS-IS, WHERE-IS AND WITH ALL FAULTS. Purchaser acknowledges that Seller makes no representations or warranties as to the Property.

(b) The Property shall be conveyed subject to all zoning conditions and all matters of record, including claims, rights of way, restrictions, and encroachments. Seller shall have no obligation to cure any matters of title.

(c) Purchaser covenants that it will proceed with the proposed use set out in its Bid, which use shall preserve the improvements currently existing on the Property in a manner in keeping with the character of the neighborhood. This is a material term of this Agreement, and Seller would not have agreed to sell the Property to Purchaser without this term. This term shall survive Closing.

6. NO BROKER

Seller and Purchaser each warrant to the other that no real estate broker or agent is entitled to a commission as a result of the transaction contemplated herein. Each party hereby indemnifies and agrees to hold harmless the other from any claim by any real estate agent or broker for any commission as a result of this transaction, which claim is caused or produced by such party.

7. ASSIGNMENT

Purchaser shall have no right to assign this Agreement.

8. DEFAULT

In the event the transaction contemplated hereby is not closed because of Purchaser's default, the Earnest Money shall be paid to Seller as full liquidated damages for such failure to close pursuant to O.C.G.A. Sec. 13-6-7, the parties acknowledging the difficulty of ascertaining

Seller's damages in such circumstances and that the amount specified as Earnest Money represents a reasonable good faith estimate by the parties of the amount of damages that Seller would incur in such event, whereupon neither party hereto shall have any further rights, claims or liabilities under this Agreement except for the provisions which are made to survive the termination or cancellation of this Agreement. Said liquidated damages shall be Seller's sole and exclusive remedy, and Seller shall expressly not have the right to seek specific performance. In the event the transaction contemplated hereby is not closed because of Seller's default, then Purchaser shall have the right to terminate this Agreement and all funds deposited by Purchaser with Escrow Agent shall be refunded promptly to Purchaser.

9. MISCELLANEOUS

- (a) This Agreement shall be construed and interpreted under the Laws of the State of Georgia.
- (b) To the extent any rights, powers or privileges are expressly stipulated herein, such rights, powers and privileges shall be restrictive of those given by law.
- (c) No failure of Purchaser or Seller to exercise any power given either party hereunder or to insist upon strict compliance by either party or its obligations hereunder, and no custom or practice of the parties at variance with the terms hereof shall constitute a waiver of either party's right to demand exact compliance with the terms hereof. Any condition or right of termination or rescission granted by this Agreement to either Purchaser or Seller may be waived in writing by the party for whose benefit such condition or right was granted.
- (d) Time is of the essence in complying with the terms, conditions and agreements of this Agreement.
- (e) This Agreement and the Invitation for Sealed Bids, which is incorporated herein by reference, contain the entire agreement of the parties hereto with respect to the subject matter hereof and no representations, inducements, promises or agreements, oral or otherwise, between the parties and not expressly stated herein, shall be of any force or effect.
- (f) This Agreement shall be binding upon and shall inure to the benefit of the parties hereto, their respective heirs, legal representatives, successors and permitted assigns. Each signatory hereto represents and warrants that he or she has the authority to sign for such Party.

- (g) No amendment to this Agreement shall be binding upon Purchaser and Seller unless such amendment is in writing duly executed by both Purchaser and Seller.
- (h) This Agreement may be executed in separate counterparts. It shall be fully executed when each party whose signature is required has signed at least one counterpart even though no one counterpart contains the signatures of all the parties. The date on which the last of the parties executes the Agreement shall be the Effective Date.
- (i) Survival. Subject to the time and liability limitations expressly set forth elsewhere in this Agreement, all warranties, representations and covenants made by Seller or by Purchaser in this Agreement and in any documents, instrument or certificate executed and delivered pursuant hereto or in connection herewith shall survive, and shall not be merged or extinguished by the closing, delivery of deed, or any investigation made by or on behalf of either party hereto. The provisions of this paragraph need not be restated in any document or Agreement made to delivered at closing.

IN WITNESS WHEREOF, Seller and Purchaser and have caused this instrument to be executed under seal as of the day and year first above written.

**SELLER:
CITY OF AUSTELL, GEORGIA**

Seller notice address:

By: _____
Name: _____
Title: Mayor
Date of Seller's Execution: _____

Attest: _____
Name: _____
Title: City Clerk

PURCHASER:

Purchaser notice address:

[Purchaser name]
By: _____
Name: _____
Title: _____
Date of Seller's Execution: _____

EXHIBIT A
Legal Description of the Property

All that tract or parcel of land lying and being in Land Lot 92 of the 18th District, 2nd Section, Cobb County, Georgia, and being more particularly described as follows:

BEGINNING at a point located at the intersection of the Southerly side of Rose Hill Street (30 foot right of way) and the Westerly side of Spring Street (50 foot right of way); running thence South 01 degrees 52 minutes 57 seconds West and along the Westerly side of Spring Street a distance of 73.5 feet to a point marked by an iron pin; running thence South 89 degrees 57 minutes 05 seconds west a distance of 92.71 feet to a point; running thence North 88 degrees 15 minutes 13 seconds West a distance of 82.5 feet to a point marked by an iron pin; running thence North 00 degrees 19 minutes 13 seconds West a distance of 81.30 feet to a pin marked by an iron pin located at the Southerly side of Rose Hill Street; running thence South 86 degrees 41 minutes 54 seconds East along the Southerly side of Rose Hill Street a distance of 178.34 feet to a point marked by an iron pin located at the intersection of the Southerly side of Rose Hill Street and the Westerly side of Spring Street, same being the point of BEGINNING. All as shown by that plat of survey prepared by George Willis Crusselle, RLS, dated March 29, 1993; said plat being made a part hereof by this reference thereto. Being the same property conveyed in Limited Warranty Deed dated 01/04/2008, at Deed Book 14572, Page 4183, Cobb County, Georgia Records, from Regions Bank to Stephen McAllister.

Exhibit 3 - Legal Description of the Property

All that tract or parcel of land lying and being in Land Lot 92 of the 18th District, 2nd Section, Cobb County, Georgia, and being more particularly described as follows:

BEGINNING at a point located at the intersection of the Southerly side of Rose Hill Street (30 foot right of way) and the Westerly side of Spring Street (50 foot right of way); running thence South 01 degrees 52 minutes 57 seconds West and along the Westerly side of Spring Street a distance of 73.5 feet to a point marked by an iron pin; running thence South 89 degrees 57 minutes 05 seconds West a distance of 92.71 feet to a point; running thence North 88 degrees 15 minutes 13 seconds West a distance of 82.5 feet to a point marked by an iron pin; running thence North 00 degrees 19 minutes 13 seconds West a distance of 81.30 feet to a pin marked by an iron pin located at the Southerly side of Rose Hill Street; running thence South 86 degrees 41 minutes 54 seconds East along the Southerly side of Rose Hill Street a distance of 178.34 feet to a point marked by an iron pin located at the intersection of the Southerly side of Rose Hill Street and the Westerly side of Spring Street, same being the point of BEGINNING. All as shown by that plat of survey prepared by George Willis Crusselle, RLS, dated March 29, 1993; said plat being made a part hereof by this reference thereto. Being the same property conveyed in Limited Warranty Deed dated 01/04/2008, at Deed Book 14572, Page 4183, Cobb County, Georgia Records, from Regions Bank to Stephen McAllister.