

**REQUEST FOR BIDS
CITY OF LYTLE, TEXAS**



**SALE OF GAS UTILITY SYSTEM
REQUEST FOR BIDS - #2024-07-03**

**BID OPENING DATE:
Tuesday, July 26, 2024 – 2:00 PM**

**BID DOCUMENTS AND TECHNICAL SPECIFICATIONS
FOR
CITY OF LYTLE
SALE OF GAS UTILITY SYSTEM
REQUEST FOR BIDS – #2024-07-03**

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**BID OPENING DATE:
FRIDAY, JULY 26, 2024 – 2:05 PM**

**REQUEST FOR BIDS – #2024-07-03
SCHEDULE SUMMARY**

Wednesday	July 3, 2024 The Devine News and City of Lytle Website	Bid Documents Released and Legal Advertising for Bid
Wednesday	July 17, 2024 12:00 PM	Last day for inquiries and clarifications. <i>(Please submit all questions via zachary.meadows@lytle.tx.org)</i>
Friday	July 26, 2024 2:00 PM City of Lytle City Hall 2:05 PM City of Lytle City Hall	Deadline for Submission of Bids via Hard Copy Opening of Bids
Monday	August 12, 2024 City of Lytle City Hall	City Council Meeting Award of Bid

Note: This schedule is preliminary and may be modified at the discretion of the Owner.

**INVITATION TO BID
REQUEST FOR BIDS – #2024-07-03**

SALE OF GAS UTILITY SYSTEM

The City of Lytle, Texas invites the submission of bids from experienced professionals willing to purchase and operate the Natural Gas Utility System of the City.

THE CITY OF LYTLE CITY SECRETARY MUST RECEIVE THE BIDS NO LATE THAN 2:00 PM ON FRIDAY JULY 26, 2024. NO BIDS RECEIVED AFTER THE DURE DATE AND TIME WILL BE CONSIDERED UNRESPONSIVE.

BIDS WILL BE PUBLICLY OPENED AT THE LYTLE CITY HALL LOCATED AT 14916 MAIN STREET, LYTLE, TEXAS 78052 ON JULY 26, 2024 AT 2:05 PM.

Please visit the Lytle website (<https://www.lytle.tx.org>), to download a copy of the Bid documents; or a copy can be obtained in person at Lytle City Hall: 14916 Main Street, Lytle, Texas 78052.

All Bids submitted for City Consideration must include one (1) original and five (5) copies, be clearly marked on the outside of the sealed envelope with the words “Request for Bids – RFB #2024-07-03, City of Lytle Sale of Gas Utility System, Attention: City Secretary”, and must contain the name of the company submitting the proposal.

Advertisement: The Devine News, July 3, 2024

**COMPETITIVE SEALED BID – #2024-07-03
CITY OF LYTLE SALE OF GAS UTILITY SYSTEM
SCOPE OF WORK AND SPECIAL CONDITIONS**

SECTION 1. INTRODUCTION AND GENERAL INFORMATION

A. INTRODUCTION AND UTILITY DESCRIPTION

The City of Lytle, Texas (“City”), invites bids for the purchase of the City’s gas utility business. The purchase will be of the entire gas utility business group. A qualified purchaser must either be fully authorized and in good standing with all applicable governmental authorities enabling it to lawfully provide retail natural gas service in the current service territory, including but not limited to having all necessary governmental approvals and certifications (for example, a Certificate of Convenience and Necessity (“CCN”)), or show a clear capability to promptly obtain such authority prior to the closing of the purchase. The City expects to fully cooperate with the winning bidder in its required efforts to obtain all regulatory approvals necessary to effectuate the transfer of the retail gas utility.

Although the City desires the sale of its gas utility to be completed as soon as possible, the closing date for such sale may be adjusted to a later date based upon the outcome of this RFB process.

The City is requesting sealed bids submitted by qualified bidders will be reviewed by the City’s Selection Committee. The Selection Committee will identify a preferred bid from all bids and will forward that bid to City Council for consideration and formal approval.

The City will generally comply with the following schedule for the selection process, subject to changes necessary to ensure fairness and to accommodate unanticipated events. The City of Lytle (the “City”) hereby notify the general public and all interested parties that the City Council of the City of Lytle is seeking and will consider sealed bids for the purchase of the City’s Gas Utility. A legal entity that submits a response to this request for bids shall be referred to as a “Bidder.” The City intends to enter into a Purchase and Sale Agreement (“Purchase and Sale Agreement”) to transfer ownership to the Gas Utility as described in this Request for Bids (“RFB”).

This RFB has been published at the City of Lytle’s website and bid packets may be downloaded from a link on the City website <https://www.lytle.tx.org/> or by contacting the Office of the City Secretary at 830-347-4164.

Any modifications to this RFB or addenda pertaining to this RFB will be published to the City’s website, and all proposers are responsible to periodically check the City of Lytle’s website for relevant updates prior to the submittal of a bid.

B. OVERVIEW

The City of Lytle is located southwest of San Antonio at the intersection of Bexar, Medina and Atascosa Counties and along Interstate 35. The city has a total area of 4.5 square miles and a population of approximately 2,965 residents.

The population of the city grew from 2,094 in 1990 to just under 3,000 in 2021 – a 50% growth over a 10-year period. The city anticipates additional growth in upcoming years as existing, multi-phase residential projects continue their build-out and additional residential and retail projects are located in the city.

Currently, the City's retail gas utility service has been completely operated by CPS Energy pursuant to a franchise agreement and Maintenance and Operations Agreement with the City. CPS Energy will no longer be providing that service effective October 1, 2024. The City is seeking to sell the retail gas utility (to continue operations and maintenance of the gas utility business for current and future customers) to a buyer who is already operating a retail gas utility elsewhere in Texas.

C. DEADLINE AND BID REQUIREMENTS

All sealed bids must be received at City Hall, 14916 Main Street, Lytle, Texas 78052 before 2:00 p.m. on July 26, 2024. The City will not accept bids after the deadline; no bid received after this deadline will be opened or considered. Use of the U.S. Postal Service, private delivery companies, or courier services is undertaken at the sole risk of the Bidder. It is the Bidder's sole responsibility to ensure that the bid is in the possession of the issuing office by the deadline. The City will date and time-stamp each bid upon submission, and a receipt will be provided to the respective Bidder.

All Bids submitted for City Consideration must include one (1) original and five (5) copies, be clearly marked on the outside of the sealed envelope with the words "Request for Bids – RFB #2024-07-03, City of Lytle Potential Sale of Gas System, Attention: City Secretary", and must contain the name of the company submitting the proposal.

All bids must include at a minimum the information specified in Section 4, below. Failure to include any required information will negatively affect a bid's evaluation and may be cause for its rejection. The inclusion of any additional information that will assist in its evaluation is encouraged. The adequacy, depth, and clarity of the bid will influence, to a considerable degree, its evaluation. The bid submitted must be complete enough for selection to be made based solely on its contents.

D. EVALUATION OF BIDS

City staff will first examine the bids to determine their conformance with the requirements of this Request for Bids for the Potential Sale of the Gas System. Any bids that are determined to be non-responsive will be rejected. Therefore, Bidders should exercise particular care in reviewing the required bid format as set forth in this RFB. See Section 4 for a description of the submittal requirements and Section 5 for the evaluation criteria

of bids. City will designate an RFB selection committee to review the bids and submit its recommendations to Lytle City Council.

E. AWARD OF BID

City may select one Bidder to enter a Purchase and Sale Agreement for the Utility. City will select the bid that is determined to be in the City's best interests. The selected bidder will be required to enter into a Purchase and Sale Agreement substantially in the form included in Exhibit "B". The City, in its sole discretion, may reject any or all bids and may decline to complete the sale of the Utility. Additionally, the City reserves the right to waive insignificant and administrative errors found in any bid, but such waiver will not modify any remaining RFB requirements.

City further reserves the right to designate a reserve or backup Bidder. In the event the selected Bidder should default or for any reason fail to enter into, and consummate, a Purchase and Sale Agreement for the Utility, the City may contact the backup Bidder to enter into a Purchase and Sale Agreement based on the backup Bidder's proposed bid price.

F. CONTACT PERSON

Please submit written questions regarding this RFB to:

Zachary Meadows, City Administrator

Email: zachary.meadows@lytle.tx.org

The City will not provide an oral explanation of the RFB specifications and no oral instructions will be given before the award. Requests from interested Bidders for additional information or interpretation of the information included in the specifications must be submitted in writing and directed to the email address above. No questions will be accepted by telephone.

The deadline for receipt of written questions shall be 12:00 PM (Noon) CST, Wednesday, July 17, 2024. All written responses will be posted on the City website www.lytle.tx.org under Administration and Government – Administration – Bid Postings.

G. INFORMATION PROVIDED BY CITY

Information included in, or provided with, this RFB is provided solely for the convenience of the Bidders. **THE CITY MAKES NO REPRESENTATION OR WARRANTY OF ANY KIND AS TO THE ACCURACY OR COMPLETENESS OF THE INFORMATION INCLUDED IN OR PROVIDED WITH THIS RFB.** Bidders are solely responsible for conducting such independent due diligence investigations as may be necessary for the preparation of bids. The City and its employees, consultants, agents, and advisors are not and will not be responsible for the completeness or accuracy of any information distributed or made available, orally or in writing, during this bidding process.

H. COSTS AND EXPENSES OF BIDDERS

The City accepts no liability under any circumstances for any costs or expenses incurred by Bidders in making a bid, visiting and evaluating the properties, attending any meetings or interviews, participating in negotiations of the agreement, or in acquiring information, clarifying or responding to any condition, request, or standard contained in this RFB. Each Bidder who participates in this bidding process does so at its own expense and risk and agrees that the City shall not reimburse any costs incurred during this process, whether or not any award results from the solicitation.

SECTION 2. TERMS OF OFFERING

The City is seeking Bidders who are willing and able to purchase the City's Gas Utility hereinafter referred to as "Utility" for the uses and purposes stated below, in accordance with the goals as stated herein, and in compliance with the below Standards and Controls established for the Utility and other applicable and governing rules and regulations.

The City's goals for seeking to this RFB for the Utility include, but are not limited to, the following:

- Ensure the bid complies with the requirements of this RFB.
- Ensure Bidder's proposed use is compatible with the continued operation and maintenance of the City's Gas Utility for current and future gas utility customers.
- Ensure Bidder's bid and proposed use of the Utility provides best value to the City.

SECTION 3. STANDARDS AND CONTROLS

A. SCOPE OF ACQUISITION AND TERMS AND PROPOSED USES

The City's retail gas utility serves three hundred and twelve (312) residential customers with approximately eleven (11) of those outside the City Limits and thirty-five (35) commercial and industrial customers. Approximately eight (8) of those commercial customers are tax exempt properties. The City's Gas Utility has the following characteristics:

- City's gas utility financials

Found in Exhibit "A" of these bid documents.

- Staffing

With the City of Lytle currently contracting with CPS Energy for Operations and Maintenance of the Gas Utility System, the City of Lytle doesn't currently employ anybody to operate system. All employees are held by CPS energy. The City of Lytle Public Works Director coordinates with representatives at CPS to read, turn-off, and lock meters as appropriate.

- History

The City of Lytle's natural gas distribution system includes approximately 19.9 miles of distribution gas main and 611 services. These mains and services provide natural gas to the approximate customers listed above in the City of Lytle located in Atascosa, Bexar, Medina Counties. The City of Lytle system has no transmission mains. The system is comprised of polyethylene piping, coated and cathodically protected steel piping as well as 1.9 miles of PVC main and 71 PVC services. CPS Energy began operating the City of Lytle's gas system on January 1, 2010.

1. The selected Bidder will be required to comply with all applicable federal, state, and City ordinances and regulations. The Utility is physically located in the city limits and ETJ of the City of Lytle, in Atascosa, Medina, and Bexar Counties.
2. Should a bid be accepted pursuant to this RFB, the selected Bidder will be required to enter into a Purchase and Sale Agreement with the City for the Utility substantially in the form included in Exhibit "B". Upon execution of the Purchase and Sale Agreement, the selected bidder will be required to pay the full purchase price. The Purchase and Sale Agreement will require completion of sale to occur within sixty (60) days of the effective date of the Purchase and Sale Agreement, but no later than October 1, 2024, as defined therein.
3. The Utility is offered and will be conveyed in "AS IS" condition. The City does not make any representation, guarantee, or warranty concerning the condition of the Utility.
4. By responding to this Request for Bid, the Bidder agrees that, should his/her/its bid be accepted by the City, closing on the Utility will occur no later than sixty (60) days or after the City Council's acceptance of the bid but before October 1, 2024. The successful Bidder shall be responsible for all Closing costs connected to the transfer of the Utility as defined in the Purchase and Sale Agreement, and costs of recording any deeds for easements associated with the gas Utility. These costs are in addition to the amount offered in the sealed bid.

B. ADDITIONAL BIDDER RESPONSIBILITIES

The successful Bidder shall be responsible for obtaining at its own cost and expense, all permits, standard regulatory approvals, or regulatory changes of any kind, as well as any required engineering and environmental studies. The successful Bidder will also be, at its own cost and expense, responsible for making any improvements that may be required for the Bidder's proposed uses.

City is selling the Utility in its "As Is, Where Is" condition. City will not be responsible for making any improvements.

SECTION 4. BID SUBMISSION REQUIREMENTS

A. GENERAL REQUIREMENTS

In submitting a bid, the Bidder understands and agrees to be bound by the following terms and conditions. The terms and conditions shall become a part of the Purchase and Sale Agreement and will consist of (a) this RFB, (b) any additional documents identified in the Purchase and Sale Agreement; and (c) any addenda and amendments signed by a City official with authority to do so. All shall have equal weight and be deemed a part of the entire Purchase and Sale Agreement. If there is a conflict between RFB and the Purchase and Sale Agreement, the provision more favorable to the City shall prevail.

When responding to this Request for Bid, a Bidder must provide within the sealed bid:

- An irrevocable bid offer to purchase the Utility for a particular sum of money.
- Either a pre-qualifying letter from a lender OR other verifiable proof of funds sufficient to pay the sales price.

B. COMPLIANCE WITH RFB

All bids must comply with this RFB. Each Bidder must furnish the information required by this RFB. Bids submitted without requested information or the forms requested in this RFB will be considered nonresponsive and may be rejected. Any alteration of the wording in this RFB by the Bidder may result in rejection of the bid.

Except as provided in this RFB, no contacts with, or lobbying of, City employees, City officials, or City council members will be permitted. Violation of this 'cone of silence' shall constitute basis for rejection of a bid.

Bids must be received no later than 2:00 p.m., Central Time, July 26, 2024, at the City of Lytle, City Hall, 14916 Main Street, Lytle, Texas 78052. The City will not be responsible for failure of services on the part of the U.S. Postal Office, courier companies, or any other form of delivery service chosen by the Bidder. Late submissions will be returned to the Bidder unopened. The timestamp in the City of Lytle, City Secretary's Office is the time of record for the receipt of the bid.

C. BID DELIVERY AND ACCEPTANCE

Bidder must submit one (1) original and five (5) copies of each bid totaling six (6) submissions of each bid in a sealed envelope or box. The bids marked "original" and "copy," must be submitted in a sealed envelope with the words "Request for Bids – RFB #2024-07-03, City of Lytle Sale of Gas System, Attention: City Secretary".

All bids must have a table of contents and each section tabbed. Bidders shall mark the RFB number, due date, and company name clearly on the outside of the box or envelope. Bids received on time will be opened publicly at 2:05 PM Central Time, Friday, June 26,

2024. However, only names of Bidders will be read aloud to avoid public disclosure of contents.

D. EXPLANATIONS AND CLARIFICATIONS

Requests for explanations or clarifications of this RFB shall be emailed to Zachary Meadows, City Administrator, identified in Section 1-G, above. Any explanation, clarification, or interpretation desired by a Bidder regarding any part of the RFB must be requested in writing no later than 12:00 PM Central Time, Wednesday July 17, 2024.

All requests must be received by the dates specified in Section 1-G and clearly identify the Bidder's name, point of contact, and RFB number. Nothing stated or discussed orally during any conversation, including with any City representative, shall alter, modify or change the standards and requirements of this RFB. Only interpretations, explanations, or clarifications of this RFB and answers to questions that are incorporated into a written amendment or addendum to this RFB issued by the City shall be considered by Bidders.

All amendments or addenda will be posted on the City's website (www.lytle.tx.org) under Government – Administration – Bid Postings. It shall be the responsibility of the Bidder to make inquiries as to the addenda issued. All such amendments or addenda shall become a part of this RFB, and all Bidders shall be bound by such amendments or addenda.

E. AMBIGUITY, CONFLICT, OR ERRORS IN RFB

Bidders are expected to carefully examine all documents that constitute (or that are incorporated by reference in) the RFB. The City assumes no responsibility for any errors or misrepresentations that result from the use of an incomplete RFB. If a Bidder discovers any ambiguity, conflict, discrepancy, omission, or other error in this RFB, it shall immediately notify the City of such error in writing and request modification or clarification of the document.

F. CANCELLATION OR MODIFICATION OF RFB AND REJECTION OF BIDS

The City reserves the right to withdraw this RFB at any time and for any reason and to issue such clarifications, modifications, and/or amendments, as it may deem appropriate. If there is any disagreement or discrepancy between this RFB and any supplement or amendment, the most recent supplement or amendment shall govern. The City reserves the right to waive minor irregularities in bids, if such action is in the best interest of the City and provided the waiver will not affect the amount of the bid or give a competitive advantage to the Bidder. Any such waiver shall not modify any remaining RFB requirements or excuse the Bidder from full compliance with the RFB specifications and other contract requirements, if the Bidder is the successful Bidder. The City shall accept all bids for review that are prepared and submitted in conformance with this RFB but reserves the right to accept or reject in whole or in part any or all bids submitted. The City reserves the right to request clarifications or corrections to bids. The unreasonable failure of a Bidder to promptly supply information in connection with such a request may be grounds for determination of non-responsiveness and rejection of the bid. Receipt of a bid by the City or submission of a bid to the City confers no rights upon the Bidder, nor

does it obligate the City in any manner. The City reserves, at its sole discretion, the right to determine which Bidders are qualified to enter into the Purchase and Sale Agreement as set forth in this RFB.

G. BIDDER'S INDEMNIFICATION

BY SUBMITTING A BID, BIDDER DOES HEREBY WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF LYTLE AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, IN BOTH THEIR OFFICIAL AND INDIVIDUAL CAPACITIES, FROM AND AGAINST ANY AND ALL LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES WHICH MAY ARISE BY REASON OF INJURY TO OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGE TO, OR LOSS OF USE OF ANY UTILITY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF BIDDER, HIS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, INVITEES OR ANOTHER PERSON, OR FOR ANY CLAIM, LOSS DAMAGE, SUITS, DEMAND OR CAUSE OF ACTION RELATING TO THE BID, AWARD, NEGOTIATION, OR SELECTION OF BIDDER ARISING OUT OF OR IN CONNECTION WITH THIS RFB, AND BIDDER WILL AT HIS OR HER OWN COST AND EXPENSE DEFEND AND PROTECT THE CITY OF LYTLE FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

BY SUBMITTING A BID, BIDDER DOES HEREBY WAIVE ALL CLAIMS, RELEASE, INDEMNIFY, DEFEND, AND HOLD HARMLESS THE CITY OF LYTLE AND ALL OF ITS OFFICIALS, OFFICERS, AGENTS, AND EMPLOYEES, IN BOTH THEIR PUBLIC AND PRIVATE CAPACITIES, FROM AND AGAINST ANY AND ALL CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION, AND LIABILITY OF EVERY KIND INCLUDING ALL EXPENSES OF LITIGATION AND/OR SETTLEMENT, COURT COSTS AND ATTORNEY FEES FOR INJURY OR DEATH OF ANY PERSON OR FOR LOSS OF, DAMAGES TO, OR LOSS OF USE OF ANY UTILITY OCCASIONED BY ERROR, OMISSION, OR NEGLIGENT ACT OF THE CITY OF LYTLE, ITS OFFICERS, AGENTS, EMPLOYEES, SUBCONTRACTORS, INVITEES OR ANY OTHER PERSON, OR FOR ANY CLAIM, LOSS, DAMAGE, SUIT, DEMAND OR CAUSE OF ACTION RELATING TO THE BID, AWARD, NEGOTIATION, OR SELECTION OF BIDDER ARISING OUT OF OR IN CONNECTION WITH THIS RFB, AND BIDDER WILL AT HIS OR HER OWN COST AND EXPENSE DEFEND AND PROTECT THE CITY OF LYTLE FROM ANY AND ALL SUCH CLAIMS AND DEMANDS.

SUCH INDEMNITY SHALL APPLY WHETHER THE CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS, OR CAUSES OF ACTION ARISE IN WHOLE OR IN PART FROM THE NEGLIGENCE OF THE CITY OF LYTLE, ITS OFFICERS, OFFICIALS, AGENTS, OR EMPLOYEES. IT IS THE EXPRESS INTENTION THAT THE BIDDER INDEMNIFIES THE CITY OF LYTLE FROM THE CONSEQUENCES OF THE CITY OF LYTLE'S OWN NEGLIGENCE, WHETHER THAT NEGLIGENCE IS A SOLE OR CONCURRING CAUSE OF THE INJURY, DEATH, OR DAMAGE.

IN ANY AND ALL CLAIMS AGAINST ANY PARTY INDEMNIFIED HEREUNDER BY ANY EMPLOYEE OF BIDDER, ANY SUBCONTRACTOR, ANYONE DIRECTLY OR

INDIRECTLY EMPLOYED BY ANY OF THEM, OR ANYONE FOR WHOLE ACTS ANY OF THEM MAY BE LIABLE, THE INDEMNIFICATION OBLIGATION HEREIN PROVIDED SHALL NOT BE LIMITED IN ANY WAY BY ANY LIMITATION ON THE AMOUNT OR TYPE OF DAMAGES, COMPENSATION OR BENEFITS PAYABLE BY OR FOR BIDDER OR ANY SUBCONTRACTOR UNDER WORKMAN'S COMPENSATION OR OTHER EMPLOYEE BENEFITS ACT.

BY SUBMITTING A RESPONSE TO THIS RFB, BIDDER AGREES THAT IT SHALL BE BOUND BY THE INDEMNIFICATION AND REMEDY PROVISIONS OF THIS RFB. IF ANY LIABILITY CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS, OR CAUSES OF ACTION ARISE OUT OF THIS RFB, THE CITY OF LYTLE MAY SEEK PAYMENT OF ANY EXPENSES INCURRED IN DEFENSE, SETTLEMENT, OR PAYMENT OF ANY JUDGMENTS, COSTS, FEES, CHARGES, EXPENSES, OR ANY EXPENDITURE NECESSARY DUE TO THE LIABILITY, CLAIMS, LOSSES, DAMAGES, SUITS, DEMANDS OR CAUSES OF ACTION THAT ARISE OUT OF THIS RFB FROM THE BID SECURITY PROVIDED BY BIDDER PURSUANT TO THIS RFB.

SECTION 5. BID CONTENTS

Bids must be submitted on 8.5 by 11-inch paper bound securely. Bids must contain and be organized as shown below. Each section must be separated by numbered tabs.

Cover which clearly displays the title of the RFB and Bid No.: Request for Bid for Sale of City's Gas Utility - RFB No. 2024-07-03

Tab 1: Table of Contents

Tab 2: Introduction and Bid:

Introduction: Provide Bidder's name and contact information, along with introductory information to Bidder's bid. This information may be included in the form of a cover letter or similar.

Utility Management and Projected Impact: Provide a written bid of planned maintenance and upkeep of the Utility whereby activities will take place including impact on current and future customers, or adjacent areas that may be impacted by, the proposed operation and maintenance use of the Utility.

Tab 3: Bidder biography and other information: Provide a brief history of the bidding entity, including, the nature of the entity, date Bidder was founded, number of employees, company headquarters location, and operating locations. Bidders may also provide any other general information that the Bidder believes is appropriate to assist the City in its evaluation.

Tab 4: Purchase Bid: Provide an irrevocable bid offer for the purchase of the Utility. Bidder must submit either a pre-qualifying letter from a lender OR other verifiable proof of funds sufficient to pay the purchase price.

Tab 5: Addendum Acknowledgment Form(s): If City issues one or more addenda to this RFB, then Bidder will be required to complete Addendum Acknowledgment Form. The form will be included in the addendum.

SECTION 6. EVALUATION CRITERIA

A. EVALUATION CRITERIA

Bids will be evaluated based on what is most advantageous to the City. The RFB selection committee will select the Bidder that best meets the evaluation criteria and make a recommendation to the City of Lytle City Council.

Bids will be evaluated on the basis of Bidders' responses to all provisions of this RFB. The City will evaluate and compare bids based on the criteria below:

- | | |
|--|-----|
| • Compliance with RFB Requirements | 10% |
| • Proof & History of Successful Operation & Maintenance of a Gas Utility | 40% |
| • Bid price | 50% |

B. PURCHASE AND SALE AGREEMENT

The City may select one or more Bidders to enter into a Purchase and Sale Agreement for all or portions of the Utility. The Purchase and Sale Agreement will set forth the terms and conditions of the agreement between the City and the Bidder. Decisions regarding the sale and terms of the award will be made by the City.

The Purchase and Sale Agreement will be substantially in the form of the Purchase and Sale Agreement included in Exhibit "B". The successful Bidder will be bound by the terms and conditions of the Purchase and Sale Agreement.

SECTION 7. RIGHTS RESERVED BY CITY

The City reserves the right in its sole discretion to recommend the sale of the Utility based upon the written bids received by the City without prior discussion or negotiation with respect to those bids. All portions of this RFB will be considered to be part of the Purchase and Sale Agreement and will be incorporated by reference. Any Purchase and Sale Agreement awarded in connection with the RFB will be subject to approvals as required by the City Attorney for the City of Lytle.

The City reserves the right to accept or reject any and all bids, at its sole discretion, received as a result of this RFB, to waive minor irregularities, if the irregularities would not give a competitive advantage to the Bidder, and to conduct discussions with all responsible Bidders, in any manner necessary, to serve the best interest of the City.

The City reserves the right to request additional information from any or all Bidders if necessary to clarify statements or data contained in the bids. The City reserves the right to reject any bid as a result of misrepresentation of any information contained in the bid.

While it is the present intention of the City to enter into a Purchase and Sale Agreement for the City's Gas Utility as identified in this RFB as soon as practical, nothing contained in this RFB shall be construed as a warranty or commitment on the part of the City to be obligated to enter into a Purchase and Sale Agreement and/or make conveyance of any interest in the Utility.

SECTION 8. ADMINISTRATIVE PROVISIONS

A. ISSUE DATE

The issue date of this RFB is Wednesday, July 3, 2024.

B. ISSUING OFFICE

This RFB is issued by the City of Lytle, 14916 Main Street, Lytle, Texas 78052.

C. OBTAINING RFB

The RFB will be made available free of charge. The RFB is available from the City Secretary at the City of Lytle, City Hall, 14916 Main Street, Lytle, Texas, between 8:00 a.m. and 5:00 p.m., weekdays. The RFB may also be downloaded from the City of Lytle's website at <https://www.lytle.tx.org>.

D. REVISIONS AND ADDENDA

Should it become necessary to revise any part of this RFB, provide additional information necessary to adequately understand provisions and requirements of this RFB, the City may issue one or more formal written addenda and post such on the City's website. Any addendum will include an Addendum Acknowledgment Form. The Addendum Form must be signed and returned as part of the bid response. Failure to do so may cause the bid to be ineligible for consideration. No oral or informal addendum to this RFB shall be binding on the City.

E. AWARD OF BID

Award of the bid to the successful Bidder or Bidders will be made within 60 days after the opening of bids. No award will be made until the City determines the responsibility of any Bidder under consideration, taking into consideration matters such as the Bidder's integrity, compliance with public policy and laws, past performance, fiscal responsibility, trustworthiness, financial and technical resources, capacity, and experience to satisfactorily carry out its responsibilities.

The City reserves the right to enter into a Purchase and Sale Agreement for all or parts of the Utility as deemed by the RFB selection committee to be in the best interest of the City.

F. WITHDRAWING OF BID

The Bidder warrants and guarantees that his/her bid has been carefully reviewed and checked and that it is in all things true and accurate and free of mistakes. Bids may be withdrawn any time prior to the official opening; a request for the non-consideration of bids must be made in writing to the City Secretary and received prior to the time set for opening bids.

G. ASSIGNMENT

If selected for award, the successful Bidder may not assign its rights and duties without the written consent of the City of Lytle City Council. Such consent shall not relieve the assignor of liability under this RFB and Purchase and Sales Agreement in the event the assignee defaults.

H. ATTORNEY'S FEES

If either party files litigation concerning this RFB, the bid process, or the Purchase and Sale Agreement, the party prevailing in litigation is entitled to recover reasonable attorney's fees and court costs.

I. GOVERNING LAW AND VENUE

The construction and validity of this RFB shall be governed by the laws of the State of Texas. The venue for any legal action commenced hereunder shall be in a court of appropriate jurisdiction in Atascosa County, Texas.

J. SOVEREIGN IMMUNITY

Nothing in this RFB is intended to or shall have the effect of waiving any privileges or immunities afforded the City under Texas Law, including but not limited to, sovereign immunity or official immunity and it is expressly agreed that the City reserves such privileges.

K. BIDDER'S REPRESENTATION AND GUARANTEES

By submitting its bid, Bidder represents that:

- a. Bidder has read and understands this solicitation.
- b. Bidder's bid is made in accordance with this solicitation.
- c. Bidder's bid is based upon the information set forth in this solicitation.
- d. The Bidder warrants and guarantees that the bid has been carefully reviewed and checked and that it is in all things true and accurate and free of mistakes.

L. EQUAL OPPORTUNITY

The successful bidder must agree to abide by regulations pertaining to Equal Employment set forth in all applicable local, state and federal regulations, to include not discriminating because of race, color, religion, sex, age, disability, or national origin.

EXHIBIT "A"
GAS SYSTEM FINANCIALS

CITY OF LYTLE
STATEMENT OF REVENUES, EXPENSES AND CHANGES IN FUND NET POSITION
PROPRIETARY FUNDS
FOR THE YEAR SEPTEMBER 30, 2022

	<u>Gas</u>	
OPERATING REVENUES		
Charges for Utility Service	\$ 373,456	
Miscellaneous Charges	9,238	
TOTAL OPERATING REVENUES	<u>382,694</u>	
OPERATING EXPENSES		
Personnel	174,898	
Materials and Supplies	1,329	
Services	134,126	
Gas Purchased	171,023	
Depreciation	982	
TOTAL OPERATING EXPENSES	<u>482,358</u>	
OPERATING INCOME (LOSS)	<u>(99,664)</u>	
NONOPERATING REVENUES (EXPENSES)		
Grants	-	
Bond Issuance Costs	-	
Interest Income	634	
TOTAL NONOPERATING	<u>634</u>	
INCOME (LOSS) BEFORE TRANSFERS	<u>(99,030)</u>	
TRANSFERS		
Transfers Out	(502)	
Transfers In	-	
TOTAL TRANSFERS	<u>(502)</u>	
CHANGE IN NET POSITION	<u>(99,532)</u>	
BEGINNING NET POSITION	<u>350,229</u>	
ENDING NET POSITION	<u>\$ 250,697</u>	

EXHIBIT "B"
PURCHASE AND SALE AGREEMENT

BIDDER# _____

PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT to buy and sell the City Gas Utility ("Sale Agreement") by and between THE CITY OF LYTLE, TEXAS (Seller), a Texas municipal corporation and _____

(Buyer) whose address is: _____

and will be effective on the date of the last of the signatures by Seller and Buyer as parties to this Sale Agreement ("Effective Date").

1. **AGREEMENT TO PURCHASE.** In consideration of the sum as identified in Paragraph 2 below, the mutual covenants and agreements herein set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller agrees to sell to Buyer and Buyer agrees to purchase from Seller, pursuant to the terms and conditions hereinafter set forth.
2. **PURCHASE PRICE.** At selection of Bidder as winning bid, the Buyer, as defined herein, Buyer will pay the following sales price for the Utility:

Awarded Bid Purchase Price \$ _____

Total Purchase Price \$ _____ (100% of contract price in U.S. Funds, due at execution of this sale agreement, not including Buyer's closing costs or financing costs, prepaids or prorations, in immediately available cash or by confirmed wire transfer)

3. FEASIBILITY PERIOD.

Buyer must perform, at its sole cost and expense, any assessments on the Utility system before execution of this sale agreement.

4. CLOSING.

- a. "Closing" shall mean the acts necessary to consummate the sale of the Utility.
- b. "Date of Closing" shall mean the date upon which this sale agreement is executed and full purchase price is paid.
- c. Closing shall take place within sixty (60) days after the City of Lytle City Council's acceptance of Buyer's bid and notice is given to the selected Buyer, whichever event occurs first but no later than October 1, 2024.

5. **TAXES AND OTHER PRORATIONS.** Any applicable taxes imposed upon or against the sale of the Utility shall be prorated as of the Date of Closing based upon the taxes for the current year, if known, otherwise, upon the taxes for the preceding year. All expenses and taxes up to the Date of Closing shall accrue to Seller. The provisions of this Paragraph shall survive Closing.

6. CLOSING COSTS AND PROCEDURE.

- a. **Seller's Costs.** At Closing, Seller shall be responsible for the payment of fees to prepare the Purchase and Sale Agreement and any amendments thereto.
- b. **Buyer's Costs.** At Closing, Buyer shall deliver the balance of the Purchase Price and be responsible for payment of all Closing costs connected to the sale of the Utility including, but not limited to the:
 - i. Seller's legal costs, including those related to preparing and issuing the RFB#2024-07-03 document and preparing this Agreement; and if applicable,
 - ii. costs necessary to market the sale of the Utility;
 - iii. cost of recording any related Utility Easement Deeds;
 - iv. cost related to all engineering, planning, and design;
 - v. appraisal costs; and
 - vi. all additional sale or closing fees.

- 7. **TERMS.** This is a cash sale and will be not contingent upon Buyer obtaining third-party financing. Buyer will pay the full Purchase Price at the execution of this Sale Agreement.

BUYER ACKNOWLEDGES AND AGREES THAT BUYER'S OBLIGATIONS UNDER THIS SALE AGREEMENT ARE NOT CONTINGENT UPON BUYER OBTAINING A LOAN FROM ANY LENDER. ACCORDINGLY, BUYER SHALL BE OBLIGATED TO PERFORM ITS OBLIGATIONS UNDER THIS SALE AGREEMENT WHETHER OR NOT BUYER CAN OBTAIN A LOAN TO FINANCE THE PURCHASE OF THE UTILITY.

8. ADDITIONAL TERMS AND CONDITIONS.

- a. **Release and Deed Compliance.** Buyer agrees to adhere to all restrictions, covenants, conditions, easements and encumbrances which run with the Utility as set forth in deeds associated with the sale of the gas utility.
- b. **Codes, Ordinances, State and Federal Law.** Buyer, its assignees, or any person and/or entity in possession of the Utility or any portion of the Utility, agrees that use of the Utility shall comply with all applicable ordinances of the City of Lytle, Texas, state, and federal law.
- c. **Permits and Approvals.** Buyer agrees to: 1) obtain all required permits, standard regulatory approvals, or regulatory changes of any kind, as well as any required engineering and environmental studies unless otherwise requested to be waived by the Seller, 2) obtain any permits, make any improvements that may be needed for its proposed use, unless otherwise agreed to between the parties, and 3) pay any and all applicable Federal, state and local permit fees related thereto.

9. CONDITIONS OF CLOSING.

- a. **Sale Agreement Compliance.** Seller and Buyer agree to comply with the terms of this Sale Agreement.
- b. **Deeds (if applicable).** Seller agrees to convey the Utility to Buyer upon payment in full of purchase price and execution of sale agreement, for any utility easements associated with this gas utility now in force and existing of record in the office of the County Clerk of Atascosa, Medina, and Bexar Counties, Texas. Seller's conveyance represents and warrants only good title to the Utility and specifically disclaims all other warranties.
- c. Seller will not be required to close until Buyer complies with all closing requirements set forth in the sale agreement.

10. DISCLAIMER OF WARRANTIES ("AS-IS" CONVEYANCE).

- a. Buyer agrees and acknowledges that Buyer is purchasing the Utility in an "As-Is, Where Is" condition "WITH ALL FAULTS" and specifically and expressly without any warranties, representations or guarantees, either expressed or implied, of any kind, nature, or type whatsoever, from or on behalf of the Seller.
- b. Buyer acknowledges and agrees that Seller has made no warranties or representations, expressed or implied, or arising by operation of law, including, but in no way limited to, the value, physical condition, square footage, environmental condition, zoning, good repair, operability, suitability, merchantability, profitability, marketability, past or present compliance with any rules, regulations, covenants or restrictions, development potential or fitness for a particular use or purpose of the Utility.
- c. Buyer acknowledges that it is Buyer's responsibility to make such legal, factual and other inquiries and investigations, as Buyer deems necessary with respect to the Utility. Buyer(s) acknowledge(s) that they have executed this sale agreement based solely on their own independent due diligence investigations and findings, and not in reliance on any information provided by Seller or its affiliates, agents, officers, employees or representatives. Buyer acknowledges that Buyer has not relied, and is not relying upon information, document, sales brochures or other literature, maps or sketches, projection, pro forma, statement, representation, guarantee or warranty (whether expressed or implied, oral or written, material or immaterial) that may have been given or made by or on behalf of the Seller.
- d. Without in any way limiting the generality of the preceding subparagraphs(a) through (c), Buyer specifically acknowledges and agrees that Buyer hereby waives, releases, and discharges any claim it has, might have had or may have against the Seller with respect to the condition of the Utility, either patent or latent.

11. UTILITY INSPECTION.

- a. It is the Buyer's sole responsibility to perform all inspections (physical, legal, economic, environmental, or otherwise) on the Utility and to be satisfied as to its condition prior to making an offer on the Utility; review all Utility information and due diligence materials; independently verify any information they deem important including information available in public records; and inquire of public officials as to the applicability of and compliance with land use and environmental laws, utility codes, and any other local, state or federal

laws and regulations.

- b. Buyer is responsible for the costs of all inspections, surveys, engineering reports, environmental studies, including, but not limited to, lead-based paint tests, or for any other work performed at Buyer's request and Buyer shall pay for any damage which occurs to the Utility as a result of such activities. Buyer shall not permit any claims or liens of any kind against the Utility for inspections, surveys, engineering reports, or for any other work performed on the Utility at Buyer's request. Buyer agrees to indemnify, protect, and hold Seller harmless against any liability, damage, cost, or expense uncured, directly, or indirectly, by Seller, as a result of Buyer's inspection, examination, or survey of the Utility, either prior to, on or after the date hereof. This indemnity includes Seller's right to recover all costs and expenses incurred by Seller to enforce this section, including Seller's reasonable attorney's fees. Buyer agrees to repair any damage caused by such inspections and to restore the Utility to its condition prior to the inspection. This provision shall survive the Closing and any termination of this Contract.

12. BREACH OF CONTRACT BY SELLER. If Seller defaults in the performance of any of its obligations pursuant to this Sale Agreement; and Closing fails to occur by reason thereof, Buyer may terminate this Sale Agreement or seek specific performance of this Sale Agreement. In no event shall Seller be liable for any damages including special, incidental, or consequential damages, or economic loss and/or attorney fees.

13. BREACH OF CONTRACT BY BUYER.

- a. In the event the purchase and sale contemplated in this Sale Agreement is not consummated as a result of Buyer's defaults, Seller shall have all rights as allowed by law to file for damages, specific performance or cancellation of this transaction, with Buyer to be responsible for all costs of suit, including attorney's fees and court costs.
- b. In addition, in the event that Seller is unable to collect on any check delivered by Buyer to Seller then, at Seller's option and without further notice, this Sale Agreement may be terminated immediately, and Seller may pursue any rights and remedies available at law or in equity.

14. CASUALTY. Risk of loss due to fire, all other casualty, condemnation, or exercise of the right of eminent domain shall remain with Seller until the Date of Closing; thereafter all risk of loss shall be borne by the Buyer.

If any such loss occurs prior to Closing, then Buyer shall have the right and option to either (a) terminate this Agreement, and neither Buyer nor Seller shall have any further liability hereunder, or (b) consummate this transaction and be entitled to all insurance and other proceeds relating such loss, with a credit against the Purchase Price equal to the amount of the deductible applied to any such insurance proceeds.

15. NOTICES. All notices under this Sale Agreement shall be deemed delivered when personally delivered or mailed postage prepaid, certified, or registered mail, return receipt requested, or when delivery by a courier service to the addresses set forth next to the signature of each party below.

16. WAIVER. No failure or delay on the part of Seller in exercising neither any right of Seller nor any action on the part of Seller or any course of dealing or partial performance shall be deemed a waiver of any right of Seller set forth herein or a modification of any terms set forth

herein.

17. ENTIRE AGREEMENT; CONTINGENT UPON CITY COUNCIL APPROVAL; AMENDMENT.

This written Sale Agreement, RFB and the Exhibits, Schedules and Addenda attached hereto and made a part of this Sale Agreement signed by Buyer constitute the entire and complete agreement between the parties hereto and supersede any prior oral or written agreements between the parties with respect to the Utility. This Sale Agreement is contingent upon approval by the City Council for the City of Lytle, Texas, and may not be amended, altered, modified, or discharged except by an instrument in writing signed by the Buyer and Seller.

18. CONFLICT BETWEEN RFB AND SALE AGREEMENT. In the event of any conflict between the Request for Bid and this Sale Agreement entered into between the parties hereto the provision more favorable to Seller shall prevail.

19. SEVERABILITY. The invalidity of any provision of this Sale Agreement shall not affect the validity or enforceability of any other provision set forth herein.

20. ASSIGNMENT. Buyer may not assign this Sale Agreement or Buyer's rights hereunder without the prior written consent of Seller. Seller shall, in its sole discretion, determine whether to grant or withhold such consent.

21. BINDING EFFECT. This Sale Agreement shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, personal representatives, legal representatives, heirs and assigns.

22. COUNTERPARTS. This Sale Agreement may be executed in one or more counterparts, each of which shall have the force and effect of an original, and all of which shall constitute but one document.

23. ACKNOWLEDGMENT. The Buyer certifies that he or she is of legal age and has full legal capacity and authority to understand, execute and deliver this Sale Agreement. If Buyer is purchasing the Utility on behalf of a for-profit entity, non-profit organization, or public agency, the Buyer is executing this Sale Agreement on behalf of such entity and Buyer certifies to Seller that Buyer has the authority to execute this Sale Agreement on behalf of such entity, and that such entity shall be bound by the matters contained herein.

24. GOVERNING LAW. This Sale Agreement is governed by the laws of the State of Texas and all obligations of the parties, and venue for any legal action under this Contract, are performable and shall take place in Atascosa County, Texas. This Sale Agreement is subject to all applicable federal and state laws, statutes, codes, and any applicable permits, ordinances, rules, orders and regulations of any local, state or federal government authority having or asserting jurisdiction, but nothing contained herein shall be construed as a waiver of any right to question or contest any such law, ordinance, order, rule or regulation in any forum having jurisdiction.

25. SUCCESSORS; ASSIGNS. This Agreement and all of the terms, covenants, and conditions hereof and of the various instruments executed and delivered pursuant hereto shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns and shall survive Closing.

26. HEADINGS. The headings of the paragraphs and subparagraphs of this Agreement are for purposes of convenience only and shall in no way affect the construction of any of the terms, covenants, or conditions hereof.

27. MODIFICATIONS. Neither this Agreement nor any term, covenant, or condition hereof may be modified or amended, except by an agreement in writing, executed and delivered by the party against whom enforcement of such modification or amendment is sought.

28. ATTACHMENTS. The following Attachments/Exhibits are attached hereto and fully incorporated herein by reference for all parties:

Front-End Bid Documents

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

SELLER:

City of Lytle, Texas

By: _____

Date: _____, 2024

BUYER:

By: _____

Name: _____

Phone: _____

Fax#: _____

Email: _____

Date: _____, 2024