

CITY OF HAMILTON, OHIO

CONTRACT # 10-67

**Compressed Natural Gas
Time Fuel Station & Storage**

**FOR THE
DEPARTMENT OF GAS & WATER**



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I. ADVERTISEMENT FOR BIDS

CONTRACT #10-67

**Compressed Natural Gas
Time Fuel Station & Storage**

FOR THE

DEPARTMENT OF GAS & WATER

CITY OF HAMILTON, OHIO

Sealed bids will be received by the Purchasing Agent of the City of Hamilton, Hamilton Municipal Building, 345 High St., Suite 730, Hamilton, Ohio 45011, until two (2) o'clock P.M., Local Time, on the 8th day of December 2010, at which time the bids will be publicly opened and read aloud for furnishing the following:

All necessary labor, supervision, material, equipment, insurances, etc. in order to perform the conversion and associated work for the City of Hamilton's CNG Time Fuel Station Project as indicated within the documents.

All work is to be included in the bid.

The Contract Documents and Project Manual with Specifications may be obtained online by query at www.hamilton-city.org click on City Services then Bids & Quotes, by query directly at www.demandstar.com, or by pick-up at the Hamilton Municipal Building, Purchasing Div., 345 High Street, Suite 730, Hamilton, Ohio 45011. The contract documents will be also available for examination during regular business hours until the date of bid opening at Ergo Consulting, LLC, 26471 SouthPoint Road, Suite B, Perrysburg, Ohio 43551.

Bidders may address inquiries to:

Tyler Dunlap
Ergo Consulting
26471 SouthPoint Road
Suite B
Perrysburg, Ohio 43551
Phone: 419-293-5257
tyler@ergobio.com

1. Submit written request for clarification, correction or interpretation to the City not less than 7 days before the date for receipt of bids.
2. Modifications to the bidding documents will be issued as Addenda to the specifications and will become a part of the Contract.
3. No bidder shall rely on oral modifications or any other method of clarification, correction or interpretation of the bidding documents. Only modifications set forth in an Addendum will be binding.

The City reserves the right to reject any and all responsive bids, and advertise again, or to accept any bid which may be deemed to advance the best interest of the City of Hamilton, Ohio.

John Hoskinson
Purchasing Agent

Joshua Smith
City Manager

To be advertised: 11/19/2010 & 11/26/2010

II. INSTRUCTIONS FOR SUBMITTING BIDS

1. Original Bid

An Original Bid is a response to an Invitation to Bid (hereinafter referred to as an "ITB" or "bid"), which complies with Paragraph 2 of these Instructions. Any ambiguous statements contained in the ITB or resulting contract shall be construed in favor of the City.

2. Bid Completion

The Original Bid and all duplicate copies must be properly completed, signed by the bidder, and accompanied by one copy of necessary supportive documentation. Unless otherwise stated, the bidder need only to execute and return the following responsive pages; Bid Security, Proposal Form, Bidding Schedule, Non-Collusion Affidavit and Declaration of Personal Property Tax Delinquency Affidavit. The Original Bid must contain an ORIGINAL signature of the bidder (recommended that blue ink be used to sign the Original Bid). Any Duplicate copies must be an exact duplicate of the Original Bid to include the signature as appearing on the Original Bid and all supportive documentation and required responsive pages. Bid prices in the Bidding Schedule are to be written both by words and by figures, and in case of any conflict, the former will apply. No bid will be accepted which does not contain an adequate or reasonable price for each and every item named in the Bidding Schedule. Only bids which are made out upon the regular ITB forms will be considered. A bidder shall not stipulate in his bid any conditions not contained in the ITB. Such stipulations may be cause for rejection of the bid.

3. Bid Security and Contract Bond

No bid will be considered unless accompanied by a certified check, or bid bonds in the amount of 10% of the total bid, payable to the City as guarantee that if the bid is accepted, the bidder will execute and file the proposed Contract within ten (10) days from the date of the award of the Contract. On failure of the successful bidder to execute the Contract and/or required bond and insurances, he shall forfeit the deposit as agreed liquidated damages, and the acceptance of the bid will be contingent upon the bidder agreeing to this provision. The bid securities will be held until the Contract is executed and approved.

Section 171.05 of the Codified Ordinances provides that contracts for the purchase of any articles, supplies, commodities, materials, and equipment involving an expenditure of Twenty Five Thousand (\$25,000) or more shall be secured by a performance bond with sufficient surety in an amount at least equal to 100% of the contract price as security for the faithful performance of the awarded contract. The Contract Bond must contain a separate binding provision that the Surety will guarantee the payment of all persons performing labor and furnishing materials in connection with the awarded contract. However, the Purchasing Agent has waived the requirement for the performance bond for this contract.

4. Signing Of ITB

ITB's, which are not signed by individuals making them, should have attached thereto a power of attorney evidencing authority to sign the ITB in the name of the person for whom it is signed. ITB's, which are signed for a co-partnership, should be signed by all of the co-partners, or by an attorney-in-fact. If signed by attorney-in-fact, there should be attached to the ITB a power of attorney evidencing authority to sign the ITB. ITB's which are signed for a corporation should have the correct corporate name thereof signed in hand writing or in typewriting, and the Signature of the president or other authorized officer of the corporation should be manually written below the written or typewritten corporate name following the word "By: _____." If ITB's are signed for any other legal entity, the authority of the person signing for such legal entity should be attached to the ITB.

5. Sealed Bid

The Original Bid and any requested duplicate copies must be submitted in a sealed envelope ("envelope" means any type of sealed opaque container). The Contract number must be clearly marked on the exterior of the sealed envelope of the Original Bid and any requested duplicate copies. If the bidder is using an express mail or similar type of courier service, the Contract number must be clearly marked on the outside of the "express mail" or "courier service" envelope or the Bid and duplicate copies must be enclosed in a sealed envelope within the express mail or courier service envelope. Failure to comply with this requirement will result in the Bid and duplicate copies being opened prior to the scheduled time and date for opening and will be immediately disqualified with no further consideration being given for award of contract.

6. Bid Submission

The Original Bid and any duplicate copies must be submitted in the following manner: for supplies and services to the Purchasing Department prior to 2:00 o'clock P.M., of the scheduled day of opening as listed in the Bid. All bids will be time/date stamped upon receipt by the Purchasing Department, and this shall be the official time/date of receipt. Postmarks, or other times/dates appearing on the bid envelope will not be considered as the official time/date of

receipt. Bids for supplies and services may be mailed or delivered to: Purchasing Agent, One Renaissance Center, Finance Dept., Suite 730, 345 High Street, Hamilton, Ohio 45011. Bids submitted with insufficient postage or marked C.O.D. will not be accepted. Bids will be received during regular business hours, 8:30 A.M. - 5:00 P.M., Monday through Friday, except recognized holidays. Telegraphic, facsimile, or any other mode of transmitting a bid to the City shall not be considered as a valid bid submission. Bidders using "express mail" or other types of "courier service" should verify with the service, the correct address to ensure timely delivery of the bid to Purchasing Agent. The City of Hamilton shall not be responsible or liable for non-delivery and/or late delivery of a Bid due to failure of the bidder to list a correct address or provide sufficient postage.

7. Late Bid

Any bid for supplies and services received after 2:00 o'clock P.M., on the scheduled day of opening, will be marked as "LATE," remain sealed, and receive no further consideration for award. Sealed LATE bids will be retained in the bid file. Bidders should allow sufficient time for mailing of their bids to ensure delivery to the Purchasing Agent prior to 2:00 o'clock, P.M., on the day of opening. The City will not be held responsible or liable for a LATE bid due to failure of the bidder to allow sufficient time for delivery and/or failure of the postal service, express mail or courier service to complete delivery by 2:00 o'clock on the scheduled day of opening.

8. "No Bid" Responses

Bidders responding to an ITB with a "No Bid" are requested to state thereon, the reason for the "no bid."

9. Bid Opening

Bids shall be publicly opened at the Municipal Building after 2:00 o'clock P.M. on the scheduled date of opening as listed in the ITB. The Purchasing Agent will read all bids. Once bids have been opened and read, responses will be made available to any interested bidder in attendance at the opening. At no time may any bid, or part thereof, be changed or corrected or otherwise altered and/or removed from the bid desk area. Anyone who violates this requirement will be subject to all penalties permitted by Law.

10. Questions

Any questions or inquiries regarding a particular ITB should be directed to the Information telephone number listed on the ITB.

11. Interpretation of ITB

If any person contemplating submitting a bid is in doubt as to the true meaning of any part of the ITB, he may submit to the City a written request for an interpretation thereof. The person submitting the request will be responsible for its prompt delivery. Any interpretation of the ITB will be made only by addendum duly issued or delivered to each person receiving a set of such documents. The City will not be responsible for any other explanations or interpretations of the ITB. No statement, representation, opinion, promise or instruction contained in the ITB or made in connection with performance of this Contract by a City officer or employee, during and in the scope and course of the officer or employee's employment with the City, shall be deemed to constitute a statement, representation, opinion, promise or instruction of such person in their individual capacity, and neither the City Council members by virtue of authorizing the execution of this Agreement, nor the City Manager by virtue of having executed it shall be held personally liable or accountable for such activity in connection with this Agreement.

12. Preparation of Bid on Premises

To protect the integrity of the Sealed Competitive Bidding process, bids shall not be prepared, completed, or altered on City premises. Any bid which is, or known to have been prepared, altered or completed on the premises shall be immediately disqualified and will receive no further consideration for award.

III. STANDARD TERMS AND CONDITIONS

1. Headings

The headings used in the Invitation to Bid (hereinafter referred to as an "ITB" or bid") are for convenience only and shall not affect the interpretation of any of the terms and conditions thereof. When terms and conditions set forth elsewhere in the ITB conflict with these terms and conditions, the ITB standard terms and conditions shall prevail.

2. Governing Law/Severability

The ITB, award and agreement (hereinafter referred to as "the Contract") entered into with the successful bidder are governed by the laws of the State of Ohio. If any provisions of the Contract or the application of any such provision shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of the Contract shall remain in full force and effect.

3. Drug-Free Workplace

By virtue of the signature on the Proposal Form of this Invitation to Bid, the bidder certifies, to the best of his/her ability, that all of its employees will not purchase, transfer, use or possess illegal drugs or alcohol or abuse prescription drugs, in any way, while working on City property. Failure to comply will result in IMMEDIATE termination of any awarded contract and the contractor will be subject to any/all penalties as set forth in Paragraph 26 of these terms and conditions.

4. Information Requested

Bidders shall furnish all information as requested in the ITB. Additional information, necessary for evaluation of the bid, may be attached to the Original Bid response and requested duplicate copies, and shall be properly identified as being a part of the ITB. The City reserves the right to request literature, or other documentation for clarification, although such may not have been set forth in the ITB. Failure to provide required information shall render the bid response invalid.

5. Confidential Information Requested

The City reserves the right to request additional confidential information, including but not limited to financial information, to be used for evaluation purposes even though such information may not have been required by the ITB. In the event such information is requested, the City agrees to retain such information as confidential only to the extent permitted by law.

6. Samples Requested

When requested, samples shall be furnished at the bidder's expense, and unless otherwise specified, prior to opening of the bid. Samples shall be clearly identified by the bidder's name, corresponding Contract number, and item(s) which the samples represent in the bid. The City acknowledges that it may receive bids from multiple distributors bidding the same manufacturer's products. The City will accept samples submitted by the manufacturer on behalf of multiple distributors provided that samples be accompanied by written documentation, on manufacturer's letterhead and signed by an authorized representative of the manufacturer, listing the named distributor(s) for whom samples are being provided. Any bidder not appearing on this list and who has failed to submit required samples shall be considered non-responsive. Unless otherwise stated, any sample submitted with the bid shall not be deemed to vary any of the provisions, specifications, or terms and conditions of the bid. Samples not destroyed in testing will be returned, at the bidder's expense, upon written request. Samples not so requested shall become the property of the City. Samples of awarded items shall not be returned and shall be retained by the City until completion of the contract. Unsolicited samples which are submitted in response to a bid shall be at the bidder's risk and shall not be examined or tested, and shall not be considered in the evaluation process. The City reserves the right to request samples although such may not have been set forth in the ITB.

7. Brand Names in ITB

Unless otherwise stated, brand name(s), trade names(s), manufacturer's name(s), or catalog number(s) listed in the ITB are used for the purpose of description and to establish a base level of quality. Any item offered, which contains components of equal or better quality, will receive consideration for award. Bidders are required to list any and all deviations from the bid Specifications. The City reserves the right to reject any item(s) listing deviations which it considers to be of less quality and/or which may change to overall intent of the bid Specifications and/or that may provide the bidder with an unfair advantage over other bidders. When applicable, bidders are required to state the brand name(s), etc., of the products being offered in their bid response. If the bidder fails to indicate brand name(s), the City shall consider the bidder to be offering the brand name(s) as listed in the ITB. Bidders shall not be permitted to change or alter brand name(s), after opening of the ITB, without express written approval of the Purchasing Agent.

After award of a contract, the bidder will be required to furnish the listed brand name(s) and failure to do so shall be deemed as a default, which will be subject to penalties set forth in Paragraph 23.

8. Modification of Bids

A bidder may request to modify their bid response PRIOR to the scheduled date and time for bid opening. The bidder must clearly identify any/all changes to their Original bid, in writing, signed and/or initialed by the bidder. Illegible modifications and failure of the bidder to sign and/or initial a modification may result in disqualification of the item(s), which have been modified. All documents relating to a modification shall become a permanent part of the ITB file.

9. Bids Firm

Once opened, all bid responses are firm and cannot be altered. Once a contract has been awarded, the contractor (bidder) shall deliver at the prices and terms quoted. Unless otherwise stated, all bids shall remain firm for a period of sixty (60) calendar days after the bid opening date. After sixty (60) days, the City may request the bidder to honor their bid as submitted. If the bidder does not agree to honor their Original Bid response, the City shall permit the bidder to withdraw their bid, without penalty. The City may then award the Contract to next apparent lowest responsive and responsible bidder or may cancel the entire ITB, at the option of the City.

10. Withdrawal of Bid

PRIOR to opening of the ITB, a bidder may request to withdraw their bid by written notice to the Purchasing Agent for supplies and services. The notice must set forth the reason(s) for withdrawing of the bid. AFTER opening of the bid, a bidder may request to withdraw their bid from consideration if the bid price is substantially lower than the other bids, providing the bid was submitted in good faith, and the reason for the bid price being substantially lower was due to an unintentional and substantial arithmetical error or unintentional omission of a substantial quantity of material or labor in the compilation of the bid. Notice of withdrawal must be made within two business days after the bid opening date. All requests to withdraw a bid must be placed, in writing, to the Purchasing Agent. The decision to allow the bid to be withdrawn is at the sole discretion of the City Manager. If the bid is awarded by category, the withdrawal request will apply to all items within the category. All documents relating to any withdrawal will become a part of the permanent bid file.

11. Unit Price Governs

The UNIT PRICE governs the award unless specified otherwise in the ITB. The unit price must be entered for each item being bid. Use of "ditto" marks, arrows, or other similar markings in lieu of the unit price shall be deemed non-responsive. LOT prices listed in the UNIT PRICE area shall be considered as the UNIT PRICE unless clearly identified as the LOT PRICE. Any request to change or alter the UNIT PRICE after opening of the bid shall not be acceptable nor permitted. Bidders should review their prices carefully, as once a contract is awarded, the contractor (bidder) shall be required to deliver the supplies or services at the price quoted.

12. Estimated Quantities

In cases where any part or all of the bidding is to be received on a unit price basis, the quantities stated in the ITB will not be used in establishing final payment due the successful bidder. The quantities stated on which unit prices are so invited are approximate only. Bids will be compared on the basis of number of units stated in the Bidding Schedule. Such estimated quantities, while made from the best information available, are approximate only. The City shall have the right to increase or decrease the quantities and to add or delete any item or items as may be deemed necessary or desirable. Payment on the Contract will be based on the actual number of units purchased and/or services performed, in accordance with limits set out elsewhere in the ITB. Under no circumstance or condition will the Contractor be paid on account of anticipated profits for supplies or services not purchased or performed.

13. Freight Charges

Unless otherwise stated, the City shall not be responsible for freight or delivery charges. Prices are to be based upon the supplies or services being offered F.O.B. Destination, freight prepaid and allow to the delivery destination(s) listed in the ITB or on the purchase order. Any shipment marked C.O.D. shall be rejected and returned at the Contractor's expense.

14. Taxation

The City is exempt from Federal taxes and all state and local taxes, unless otherwise provided herein.

15. Rejection of Bids

The City may reject the ITB of any bidder that is in arrears to the City from any cause, or who in former contracts with the City may have failed to perform satisfactorily, either in the character of the supplies or services or the time consumed in its delivery or completion by neglect or willful delay. The City also reserves the right to reject any and all bids, to waive any informalities or irregularities in the ITB received or to accept any bid which is deemed most

favorable to the City.

16. Use of American-Made Products and Local Preference

The City of Hamilton may purchase American-made products from local vendors and manufacturers or Butler County vendors and manufacturers, or State of Ohio vendors and manufacturers, or vendors and manufacturers within the United States of America, in that order, when all other considerations are equal and when required under Hamilton City Charter. Additionally, the City shall grant a 5% preference to the lowest local bidder/vendor meeting certain criteria established in Codified Ordinance Chapter 171, Section 171.10 "LOCAL PREFERENCE IN PROCURING COMMODITIES AND NONPROFESSIONAL SERVICES" when a non-local bidder/vendor is the lowest responsible bidder. A local bidder/vendor claiming entitlement to local preference bears the responsibility for providing evidence satisfactory to the City along with its bid documents that it meets the necessary criteria as established in the City Codified Ordinance. Copies of the above referenced Codified Ordinance are on file at the office of the Purchasing Agent, City of Hamilton, One Renaissance Center, 345 High Street, Hamilton, Ohio 45011.

17. Sub-Contracting

The bidder, who becomes the Contractor upon awarding of the Contract by the City of Hamilton, Ohio, must be the Prime Contractor performing the primary functions of the Contract. If any portion of the Contract is to be sub-contracted, such must be clearly set forth in bid response as to what part(s) are to be sub-contracted, the reasons for sub-contracting and a listing of said sub-contractors. Acceptance or rejection of a bidder's request to use sub-contractors is at the sole discretion of the City. The City reserves the right to reject any bid wherein use of sub-contractors significantly affects the ability of the bidder to function as the Prime Contractor on the awarded Contract. When approved, the sub-contractor shall agree to and be bound by any and all terms, conditions and specifications of the awarded Contract and the Contractor (bidder) shall be responsible for proper performance of the Contract by the sub-contractor.

18. Non-Assignment of Interest

The Bidder shall not attempt to assign any duties, rights or interest in the bid response. Any such effort shall not be binding on the City unless the Purchasing Agent respectively, approves such assignment in writing prior to the assignment. The Contractor (bidder), and any approved sub-contractor, shall not assign any interest, duty or right under the Contract, in whole or in part, without prior written approval from the Purchasing Agent.

19. Tabulation of Bids

After bids are received the City will tabulate them and upon completion of such tabulation will be posted on or through query on the City internet website.

20. Evaluation and Award

The Contract shall be awarded to the lowest responsive and responsible bidder/bidders who meets or exceeds the requirements specified in the ITB. Unless otherwise stated, the Contract(s) may be awarded by item or as a whole, at the sole discretion of the Purchasing Agent. Bidders may offer cash discounts for prompt payment of invoices, but such discounts will not be used to determine the final net prices offered. The City will endeavor to take advantage of cash discounts, if offered. The City will attempt to award the contract(s) within a reasonable period of time after the bid opening. The Contract shall be deemed to have been awarded when formal notice of award has been duly served upon the intended awardee (i.e., the bidder to whom the City contemplates awarding the Contract) by some officer or agent of the City duly authorized to give such notice.

21. Creation of the Contract

A binding contract ("the Contract") between the successful bidder ("the Contractor") and the City of Hamilton, Ohio ("the City") is created at the time the Contract has been signed by the City Manager. The Contract shall contain all terms, conditions and specifications of the ITB response. No responses may change or alter the terms, conditions and specifications of the ITB. Unless otherwise provided for in the ITB, the Contract may not be canceled or rescinded by the Contractor unless approved by the City Manager. Each contract must be executed in five (5) counterparts and no more, and there shall be executed original counterparts of the Contract Bond in equal number to the executed counterparts of the Contract. The City will retain Three (3) copies of such executed documents. The other two (2) will be delivered to the Contractor. The successful Contractor must provide the proper bonds and insurances, all as outlined in the ITB. The costs of executing the bonds and Contract and insurance, including all notarial fees and expenses, are to be paid by the Contractor to whom the Contract is awarded.

22. Purchase Order Required

Unless otherwise provided in the ITB, the City shall not be obligated to pay for any supplies or services, provided by the Contractor as a result of the Contract, until or unless the City has issued an official purchase order. The purchase order is required for purchases in excess of Two Hundred and Fifty (\$250) dollars and must contain the signatures of the Purchasing Agent, and the City's Director of Finance. A valid purchase order shall authorize the Contractor to

provide the required supplies or services as ordered and, upon delivery, acceptance and submission of a proper invoice, will obligate the City to pay for the supplies or services furnished by the Contractor.

23. Title to Merchandise

Title to the supplies or services passes to the City upon inspection and acceptance of the supplies or services being provided. The City shall approve and process invoices for payment upon passing of the title.

24. Delivery Inspection and Acceptance

Upon delivery of the supplies or performance of the service, the City retains the right to inspect the supplies or service prior to final acceptance to ensure compliance with the specifications, terms and conditions of the awarded Contract. In the event that the supplies or service are not in compliance with the awarded contract, the city shall notify the Contractor for removal/replacement of the supplies or service. The City shall retain all rights and remedies provided by law and the Contract. Where supplies or service, ordered by the City for delivery to a facility that is not owned by the City, (i.e., contracted warehouse) and the City has authorized the facility to take delivery of the supplies or service ordered by the City. Acceptance will occur within a reasonable amount of time after delivery to the facility.

25. Liquidated Damages for Late Delivery

The Contractor shall be responsible for any and all damages for noncompliance with the ITB, awarded Contract or valid purchase order/request including any delivery schedule. PRIOR approval by the Purchasing Agent is required to extend the stated delivery date. Approval to extend a delivery date shall be at the discretion of the Purchasing Agent and will be based upon urgency of need, existing inventories or similar considerations. The Contractor agrees to reimburse the City for any actual and direct damages resulting from the Contractor's failure to provide supplies or services in conformity with the ITB, Contract and any delivery date revised, approved delivery date. In the event direct damages are difficult to ascertain by the City, the Contractor agrees to pay the City liquidated damages in the amount of one percent (1%) of the value of the purchase order or fifty (\$50) dollars, whichever is less, for each day beyond the stated delivery date. Liquidated damages will be deducted from the invoice prior to payment. If the Purchasing Agent grants an extension of delivery, the Contractor shall not be responsible for any damages unless the Contractor fails to meet the revised delivery date. Should this occur, the City may assess applicable damages from the time of the original delivery date. Continued failure to comply with stated delivery dates may result in the Contractor being found to be in default. The Contractor agrees that liquidated damages are not a penalty.

26. Performance by Contractor

The City declares and the Contractor acknowledges that the City may suffer damages due the failure of the Contractor to act in accordance with the specifications, terms and conditions of the Contract. If the Contractor fails or neglects to perform the work as required by the Contract, the City shall provide timely written notice to the Contractor. The City shall specify in the written notice the time within the Contractor shall correct the deficiencies. If the Contractor fails to correct such deficiency within the time specified, the City may, without prejudice to any other remedy the City may have, terminate the Contract or purchase replacement supplies or services on the open market. Costs incurred by the City in seeking replacement items, including the cost of the replacement item, shall be deducted from any outstanding payments owed the Contractor. If there are no outstanding payments due, the Contractor will reimburse the City. If the Contractor fails to make reimbursement to the City, the Contractor will be ineligible to receive any further contract awards until reimbursement has been completed to the satisfaction of the City. The Contractor agrees that if the City does not give timely notice of such failure, that the City has not waived any of its rights or remedies concerning the failure of performance by the Contractor. If actual and direct damages are uncertain or difficult to ascertain, the City shall be entitled to recover liquidated damages in the amount of one percent (1%) of the value of the purchase order or fifty dollars (\$50), whichever is less, per day. The Purchasing Agent may waive or delay the accrual of liquidated damages. Waivers shall be in writing.

27. Force Majeure

If by reason of Force Majeure the Contractor is unable, in whole or in part, to perform under the Contract, the Contractor shall not be in breach of contract during the continuance of such inability. The Contractor shall, however, remedy, with all reasonable dispatch such cause preventing the contractor from carrying out the obligations under the Contract. Except as otherwise provided herein, neither the Contractor nor the City shall be liable to the other for any delay or failure of performance of any provisions contained herein, nor shall any such delay or failure of performance constitute default hereunder, to the extent that such delay or failure is caused by force majeure. The term "force majeure" as used herein shall mean without limitation: acts of God; such as epidemics; lightning; earthquakes, fire; storms, hurricane; tornadoes; floods; washouts; droughts; or other severe weather disturbances; explosions; arrests; restraint of government and people; war, strikes; and other such events or any other cause which could not be reasonably foreseen in the exercise of ordinary care, and which is beyond the reasonable control of the party affected and said party is unable to prevent.

28. Submission of Invoices

Upon delivery of supplies or performance of the service, as described on the purchase order placed pursuant to the Contract, the Contractor shall submit a "proper invoice," in duplicate directly to the Purchasing Agent, One Renaissance Center, 345 High Street, Hamilton, OH 45011. A "proper invoice" is defined as being free from defects, discrepancies, errors, or other improprieties and shall include, but may not be limited to:

- A) exact Contractor's name and address as listed in the Contract;
- B) exact Contractor's Federal Tax Identification No. (E.I./T.I.N.);
- C) exact remittance address;
- D) exact purchase order number;
- E) exact description, quantity, unit price, total price, etc. as appears on the purchase order.

The City shall make prompt payment for any supplies or services acquired from the Contractor. Upon receipt of a "proper invoice," payment, subject to the foregoing provision and, unless otherwise stated in the ITB/Contract, shall be made within thirty (30) calendar days. Defective invoices shall be returned to the Contractor noting areas of discrepancy. When an invoice is returned, the required payment date will be thirty (30) days from the day of receipt of the corrected invoice.

29. Payment of Invoices

Payment shall be made to the Contractor, in the Contractor's Federal Tax Identification number, and only as provided for in the ITB/Contract.

30. Non-Appropriation of Funds

It is understood that the City funds are contingent upon the availability of lawful appropriations by the Hamilton City Council. Subject to the applicable provisions of the Hamilton Charter, the City represents: that it has adequate funds to meet its obligations under any contract executed as a result of this ITB for the full price set forth herein; and that it has no reason to believe that it will not have sufficient funds to enable it to make all payments due hereunder such period. However, if the Hamilton City Council fails at any time during such Contract period(s) to continue funding for any Contract awarded as a result of this ITB, the City's obligations under such Contract(s) are terminated as of the date that the funding expires without further obligation to the City.

31. Cancellation of Contract

Unless otherwise stated, the City expressly reserves the right to cancel the Contract with thirty (30) days written notice.

32. Indemnification

The Contractor/Vendor agrees to indemnify, defend and hold harmless the City, including, but not limited to its public officials, City employees, and City departments, against all damages, claims, liabilities and expenses of any nature whatsoever, including, but not limited to personal injury, death and property damage, arising out of or in connection with any actions by the Contractor/Vendor including, but not limited to its owners, officers, employees, subcontractor and agents during the performance of this contract. Additionally, the Contractor/Vendor will indemnify the City, including, but not limited to its public officials, City employees, and City departments, based on a claim that the supplies or services furnished infringes a United States Patent or Copyright or constitutes misuse or misappropriation of a trade secret.

33. Non-Discrimination & Compliance with Applicable Laws

The Contractor, as a term of the Contract, shall comply with the Civil Rights Act of 1964, the Federal Rehabilitation Act of 1973, and any and all other statutes, rules, and regulations pertaining to non-discrimination.

34. Antitrust

The City and the Contractor recognize that in actual economic practice, overcharges resulting from antitrust violations are usually borne by the City. As consideration for the award of the Contract, and intending to be legally bound, the Contractor assigns to the City all right, title and interest, to all claims and causes of action the Contractor now has or may acquire under state or federal antitrust laws PROVIDED that the claims or causes of action relate to the supplies or services that are the subject of the Contract, and EXCEPT as to any claims or causes of action which result from antitrust violations that occur after the price is established under the contract and that are not passed on to the City. Additionally, Contractor warrants that any overcharges resulting from antitrust violations by Contractor's first tier suppliers and subcontractors shall not be passed on to the City.

35. Reimbursement/Worker's Compensation

The City of Hamilton requires reimbursement by the successful bidder for any expenses paid to our City employees,

by way of Worker's Compensation, when that injury has been caused by the negligence of the provider of services or goods required by this Contract.

36. OSHA Requirements

Whether or not evident on the face of the bid document, each bidder's bid shall assume that any and all work performed for the City of Hamilton by contract must be performed in a manner which complies with all current and applicable federal and state Occupational Safety and Health Administration (OSHA) rules and regulations. Therefore, in bidding upon work for the City of Hamilton, the bidder is hereby specifically instructed to take into account and incorporate such cost into its bid as is necessary to comply with all Federal and State OSHA rules and regulations which are applicable to the work sought by the contract being bid. Further, in actually performing the contract between the City and the bidder, the bidder shall perform the work in a manner which complies with all current and applicable Federal and State Occupational Safety and Health Administration (OSHA) rules and regulations. Before awarding the contract, the city of Hamilton reserves the right to inspect the safety programs and records of any contractor or a subcontractor that seeks to undertake work by the contract with the City of Hamilton. During performance of the contract the City reserves the right to inspect the work being performed for OSHA compliance and insist on compliance with applicable OSHA rule and regulations.

37. Definition of Notice

Where in any Section of the Contract there is any provision in respect to the giving of any notice, such notice shall be deemed to have been given (as to the City) when written notice shall be delivered to the Purchasing Agent of the City or shall have been placed in the United States mails, addressed to the City Manager of the City at the place where the bids or proposals for the Contract were opened; (as to the Contractor) when such written notice shall have been placed in the United States mails, addressed to the Contractor at the place stated in the Proposal as the address of his permanent place of business; (as to Surety) on the Contract Bond when a written notice is placed in the United States mails, addressed to the Surety at the home office of such Surety, and when two copies of such notice shall have been filed with the City.

38. Warranties

Contractor expressly warrants that all supplies and services furnished against this Contract will conform to the specifications, drawings, samples or other description furnished or approved by the City and will be fit and sufficient for the purpose intended, merchantable, of good material and workmanship and free from defect for one (1) year after receipt and acceptance by the City.

39. Changes

The City shall have the right to make changes in the Contract, upon approval of Hamilton City Council, which shall be done by issuance of a written change order, but no additional charges will be allowed unless authorized in writing by the City.

40. Insurance Requirements for Service Contracts

Contractor at its expense shall obtain prior to the commencement of its services and maintain in effect until the final acceptance of Contractor's services and for such additional periods as may be required by the ITB Documents, the following insurance coverage and minimum limits, set forth in this Section 40.

a. Contractor's Insurance and Certificates of Insurances

1. Contractor shall deliver to the City certificates of insurance, together with complete duplicates of the insurance policies on which the certificates are based, fully executed by the officers of the insurance company for all insurances required to be carried by the Contractor under this insurance paragraph at least five (5) business days prior to the scheduled commencement of the Contractor's services. The City of Hamilton shall be named as additional insured on all policies of insurance specified. Should the services not be completed prior to any renewal of the required Insurances, then at least 10 days prior to each anniversary of each policy required to be carried by the Contractor, the Contractor shall submit a new certificate to the City. The Contractor shall not allow any Subcontractor to commence services on its subcontract until all similar insurance required to be carried by the Subcontractor has been obtained and approved by the City. All Subcontracts are required to submit certificates of insurance and the copies of insurance policies on which they are based at least five (5) business days prior to the commencement of any services.
2. All required policies of insurance shall contain a provision stating that it shall not be canceled, permitted to expire, or be changed without ninety (90) days advanced notice to the City, the contents of such notices shall be consented to by the City. Certificates of insurances containing a cancellation clause including the phrase "will endeavor to" and "but failure to mail

such notice shall impose no obligation or liability of any kind on this company, its agents, or representatives" (or phrases that have the same meaning) shall have the phrases deleted.

3. All policies of insurance required by this Section 40 shall be underwritten by insurers having an A.M. Best's rating of not less than "A".
4. Where any insurance listed hereinafter requires that the policy of the insurance name the City of Hamilton as additional insured, the policy shall be endorsed to state that the insurance provided to the City of Hamilton shall be primary insurance with respect to such additional insured, and any other insurance policy such additional insured may have shall be deemed to be excess and not contributory.
5. If the Contractor fails to procure or maintain such insurance as is required by this Section 40, the City shall have the right, but not the obligation, to procure and maintain said insurance for the name of the Contractor and the Contractor shall pay the cost thereof and shall furnish all necessary information to make effective and maintain such insurances.
6. Contractor and its Subcontractors shall submit Worker's Compensation, Commercial General Liability and Business Auto Liability accident reports to their respective insurers immediately after any accident or occurrence and shall furnish a copy of each such report to the City.

b. Compensation Insurance

Before any services is commenced, the Contractor shall acquire and maintain, during the life of this Contract, Worker's Compensation Insurance, in the form required by the Ohio Worker's Compensation Act, for all of his employees employed at the site of the services. In case any services are sublet, the Contractor shall require the Subcontractor similarly to provide Worker's Compensation Insurance, in the form required by the Ohio Worker's Compensation Act, for all of the latter's employees, unless such employees are covered by the protection afforded by the Contractor. In case any class of employees engaged in services for this Contract is not protected under the Worker's Compensation Act, the Contractor shall provide for any such of its employees, and shall provide or cause such Subcontractor to provide Employer's Liability Insurance for the protection of his employees not protected by the Worker's Compensation Act.

c. General Liability Insurance

1. The Contractor shall acquire and maintain, during the life of this Contract, comprehensive general liability insurance, on a Commercial General Liability form and on an occurrence basis, providing, without limitation, such coverage as personal injury, bodily injury, contractual liability, broad form property damages, independent contractor, completed operations and products, coverage for premises/operations, Ohio Stop Gap Liability, underground explosions, collapse hazard, and public liability coverage as shall protect the it and the City of Hamilton and any Subcontractor during the performance of the Service work covered by this Contract from claims of or damages for personal injury, including accidental death, as well as claims or damages for property damage, which may arise from activities under this Contract, whether such activity be by itself or by any Subcontractor, or by anyone directly or indirectly employed by either of them, or in such a manner as to impose liability on the City of Hamilton. Such insurance shall name the City of Hamilton as additional insured and shall hold harmless the City of Hamilton against all suits and claims arising from or as result of the activities of the Contractor or its Subcontractor. The amount of the coverage shall be One Million Dollars (\$1,000,000) per person and per occurrence.
2. If the general liability policy the Contractor provided in compliance with these insurance requirements contains a general aggregate limitation, then the policy shall be endorsed to provide Two Million Dollars (\$2,000,000) specific aggregate for the specific services preformed under this Contract.

d. Owners, Contractors Protective Liability Insurance

Contractor shall obtain in the name of the City of Hamilton an Owners and Contractors Protective Liability (OCP) policy protecting the City against liability arising out of activities performed by the Contractor and against any acts or omissions in connection with the general supervision of the Contractor by the City of Hamilton. The O.C.P. policy shall have attached a personal injury endorsement that modifies the policy's definition of bodily injury to include false arrest, detention or imprisonment. The O.C.P. policy shall be obtained at the expense of the Contractor and its cost is not billable to the City as part of the Contract price.

e. Insurance Covering Special Hazards

Special hazards as determined by the City shall be covered by endorsement(s) to the General Liability Insurance Policy or policies herein elsewhere required to be furnished by this Contractor, or by separate policies of insurance in the amounts as defined in the Special Conditions of the Contract, included herewith.

f. Comprehensive Automobile Liability Insurance

The Contractor shall acquire and maintain during the life of this Contract, Comprehensive Automobile Liability Insurance providing, on an occurrence basis, providing, without limitation, such coverage as liability, and non-owned and hired car coverage. Such insurance shall cover the use of all motor vehicles engaged in operating within the terms of this Contract both on and off the site of the Work to be performed there under. Such insurance shall name the City as Insured along with the Contractor, and shall hold harmless the City against all suits and claims arising from or as the result of the activities of the Contractor. The amount of coverage shall be One Million Dollars (\$1,000,000) combined single limit.

g. Sub-Contractor's Insurance

The Contractor shall require Sub-Contractors, if any, not protected under the Contractor's insurance policies to take out and maintain insurance of the same nature and in the same amounts as required to be carried by the Contractor for General Liability, Automobile Liability, and other insurances required by the Contractor.

h. Property Insurance

1. The Contractor shall acquire and maintain a property insurance policy that insures against "all risks of physical damage" protecting the Contractor and the City of Hamilton up to the final date of acceptance of the completed Work under this Contract. If the property insurance policy is subject to a "cause of loss" form, that form shall be a "special causes of loss" form. At a minimum, the property insurance policy obtained by the Contractor shall include coverage for all perils and vandalism and malicious mischief.
2. In the event that the property insurance policy or any Builder's Risk insurance carried on this Contract contains any deductible or self-insured retention applicable to any loss covered thereby, the risk of loss by reason of such deductible or self-insured retention shall be upon the Contractor, and in any event, Contractor's right to recover all or any part of any loss or damage attributed to Contractor's services is limited to such recovery, therefore, as may be made by the City of Hamilton under the applicable insurance.

i. Waiver of Subrogation

The City of Hamilton and the Contractor waive all rights against each other and the Subcontractor, agents and employees of each other for damages caused by fire or any other perils to the extent such damages are covered by property insurance-applicable to the Contract except such rights as they may have to the proceeds of such insurance referred to in this Section 40 require an endorsement to provide for continued coverage where there is a waiver of subrogation, the owner of such policies will cause them to be so endorsed.

41. Weapons Free Policy

The City Weapons Free Policy prohibits the possession, transportation and storage of all weapons while engaged in the performance of this Contract, regardless of whether or not the employee responsible for the weapon is otherwise licensed to carry it. Weapons include, but are not limited to, handguns, firearms, explosives, knives including but not limited to any pocketknife that has a blade exceeding three and one half inches in length, any knife that is spring loaded and other items that may be defined as weapons under state, federal or local laws or ordinances. Unconcealed working tools, including, for example, a knife, which would otherwise violate this paragraph but the use of which is required as a function of the employee's job do not constitute a violation of this paragraph if the employee's supervisor has previously given authorization to carry the item.

For purposes of monitoring compliance with the City's Weapons Free Policy, the City reserves the right to search all City-owned or leased vehicles and all other vehicles, packages, containers, briefcases, purses, lockers, desks, storage devices, and the like maintained or brought onto City property.

A Contractor, contractor's employee, agent, sub-contractor, vendor or guest bring a Weapon onto City property or into a City program is in violation of the City's Weapons Free Policy, the Contractor forfeits any expressed or implied permission to enter or remain on the property.

Contractor coming upon City Property is responsible for communicating this policy to its employees, agents, sub-contractors, vendors and guests and shall be responsible for enforcing the policy during the Contract term.

42. Background Check of Contractor's Employees

Due to the concerns for the security of operations of City facilities, the Contractor shall be responsible to provide to the City a copy of the U.S. Department of Justice, Immigration and Naturalization Service Employment Eligibility Verification Form I-9, with any attachments, for each of his employees and the employees of Contractor's sub-contractors, system integrators, suppliers and any other personnel under the direction of the Contractor who are expected to be present on the Project Site. The City will utilize this information to conduct background checks as it deems necessary. The approval or disapproval of an employee is at the sole discretion of the City.

IV. GENERAL DEFINITIONS FOR BIDS

When used in the invitation to Bid or any ensuing contract, the following definitions shall apply. If a conflict exists between these definitions and any definition in the bid specifications, the bid specifications shall prevail.

1. Authorized Distributor

The bidder/contractor who maintains written legal agreements with manufacturers/producers to act as their agent and to provide supplies or services to the City. The authorized distributor must maintain active and sufficient facilities necessary to perform the contract, if awarded, own title to the supplies inventoried within their facility and maintain a true stock of items offered, in response to the ITB, on a continuing basis and in sufficient quantity to provide uninterrupted service to the City.

2. Bid Response

All documents, whether attached or incorporated by reference, supplied by the bidder in response to an Invitation to Bid.

3. Bidder

The person or firm that submits a response resulting from an Invitation to Bid.

4. Contractor

The bidder who, upon awarding of a contract, becomes the prime contractor who is considered to be the primary source for providing the supplies or services listed in the awarded contract and the party to whom payment will be made upon delivery and acceptance of the supplies and/or performance of the service.

5. Invitation To Bid

All documents, whether attached or incorporated by reference, utilized for soliciting bids to the City.

6. Lowest Responsive And Responsible Bidder

A bidder on the contract whose proposal responds to the bid specifications in all material respects and contains no irregularities or deviations from the specifications which would affect the amount of the bid or otherwise provide the bidder with a competitive advantage, and whose financial condition, experience, conduct and performance on previous contracts, facilities, and management skills, support the bidder's ability to execute the contract properly.

7. Order

A copy of a contract or a statement of the nature of a contemplated expenditure, a description of the property or supplies to be purchased or service to be performed, and the total sum of the expenditure to be made therefore, if the sum is fixed and ascertained, otherwise the estimated sum thereof, and an authorization to any for the contemplated expenditure, signed by the person instructed and authorized to pay upon receipt of a proper invoice.

8. Purchase

To buy, rent, lease, lease purchase, or otherwise acquire supplies or services. "Purchase" also includes all functions that pertain to the obtaining of supplies or services, including description of requirements, selection and solicitation of sources, preparation and awarding of contracts, and all phases of contract administration, and receipt and acceptance of the supplies and services and payment therefore.

9. Services

The furnishing of labor, time, or effort by a person, not involving delivery of a specific end product other than a report which, if provided, is merely incidental to the required performance. "Services" does not include services furnished pursuant to employment agreements or collective bargaining agreements.

10. Specification

Any description of the physical or functional characteristics or of the nature of supplies or services to be purchased. It may include a description of any requirements for inspecting, testing, or preparing supplies or services for delivery.

11. Supplies

All property, including but not limited to equipment, materials, insurance, and other tangible assets, but excluding land or a permanent interest in land.

- 12. **"City"**
In every case "City" refers to the City of Hamilton, Butler County, Ohio.
- 13. **Purchasing Agent**
Purchasing Agent of the City of Hamilton, Ohio.
- 14. **City Manager**
City Manager of the City of Hamilton, Ohio.
- 15. **Director of Finance**
Director of Finance of the City of Hamilton, Ohio.
- 16. **Hamilton City Council**
City Council of the City of Hamilton, Ohio.

V. PROPOSAL SECTION

1. PROPOSAL/BIDDING SCHEDULE #10-67

To the City of Hamilton, Ohio
Hamilton, Ohio

The Bidder proposes and agrees, if this Bid is accepted, to enter into a Contract with the City to perform all Work as specified or indicated in the Bid Documents for the price and within the times indicated in this Bid and in accordance with the other terms, conditions, and provisions of the Bid Documents. Bidder has become familiar with and is satisfied as to the general, local, and Site conditions that may affect cost, progress, and performance of the Work. Bidder is familiar with and is satisfied as to all federal, state, and local Laws and Regulations that may affect cost, progress, or performance of the Work. The Bidder declares the Bidding Documents are generally sufficient to indicate and convey understanding of all terms, conditions, and provisions for the performance of the Work for which this Bid is submitted.

General Information: Bidder shall submit with their bids the following information pertaining to the equipment upon which the bids are submitted:

1. Detailed equipment specifications to include the warranty.
2. Descriptive literature.

This bid is for the purchase of a 10 gge per hour time fill unit with 100 gge's of storage and two fast fill hoses. The cost of installation must also be included with the cost of the time fill unit

\$ _____ Total price for the CNG time fill with storage and installation

Approximate delivery time for time fill with storage _____

Approximate time for installation _____

****PLEASE CALL IF YOU HAVE ANY QUESTIONS – TYLER DUNLAP AT
(419) 293-5257 OR EMAIL AT tyler@ergobio.com**

The bids may also take into consideration the current IRS Code for Alternative Vehicles allowing for a pass through credit for the City of Hamilton, Ohio, thus allowing a discount on price for the CNG Systems.

% _____ offered of total tax credits available.

\$ _____ Total price after the tax credits are passed on.

It is agreed that the City of Hamilton, Ohio, shall retain the aforesaid bid surety as liquidating damages if the undersigned fails to enter into a contract within ten (10) days after notification of the award of a contract to the undersigned.

1. PROPOSAL/BIDDING SCHEDULE #10-67 (Continued)

In submitting this bid, it is understood that the right is reserved by the City Manager to reject any and all bids, or to accept any bid, which may be deemed to be for the best interest of the City of Hamilton, Ohio.

It is further agreed that this bid may not be withdrawn for a period of sixty (60) days from the date of opening thereof.

Signed this _____ day of _____, _____.

Company _____

Address _____

Signed _____

Name _____

Title _____

Phone No _____

Fax No _____

(Note: Bidders should not add any conditions or qualifying statements to this bid as otherwise the bid may be declared irregular as being not responsive to the Advertisement for Bids.)

2. DETAILED SPECIFICATIONS

DEFINITIONS:

"Reputable Manufacturer": A manufacturer who has been engaged in the business of fabricating the equipment specified for a reasonable period of time prior to the date set for opening of bids and who can demonstrate to the satisfaction of The City of Hamilton, Ohio that said manufacturer has successfully installed CNG Time Fill Stations with Storage and equipment of the type proposed to be furnished in at least three (3) instances and the performance of such equipment has been satisfactory. Manufacturers having been engaged in the business of manufacturing said equipment for a period of one (1) year prior to the date affixed for opening bids shall, prima facie, be deemed to have been engaged in such business a reasonable length of time.

"Or Equal": The specific equipment mentioned shall be understood as indicating the type, function, minimum standard of design, efficiency, and quality desired and shall not be construed in such a manner as to exclude manufacturer's equipment of comparable quality, design, and efficiency.

GENERAL SPECIFICATIONS, CONDITIONS AND INFORMATION

Design: Any equipment to be purchased shall be the manufacturer's latest model and EPA Certification of production. Said equipment shall be of superior quality and suitable to the use for which it is intended. The technical design shall be in line with the best practice in the industry and the materials and workmanship entering into the construction shall be of the kinds and qualities which will ensure long life, dependability, and low cost of maintaining and repairing.

Pre-delivery Service: Equipment is to be delivered, as directed, unpacked, assembled, cleaned and adjusted for immediate use at a location designated by the The City of Hamilton, Ohio. The equipment shall be clean and all instruments properly adjusted. Training, and Operating and maintenance manuals shall be provided at the time of delivery. Parts and price lists shall be included when special equipment is purchased or when requested by The City of Hamilton, Ohio.

Acknowledgment and Delivery Schedule of Initial Order: Time is of the essence. A delivery schedule of not more than 90 calendar days after receipt of the order shall be deemed reasonable and serve the best interests of The City of Hamilton, Ohio.

Proposals exceeding this schedule may be rejected. Delivery will be made on or before March 15, 2011. The successful bidder shall acknowledge the receipt of the order and certify delivery as scheduled.

Warranty: The successful bidder shall warrant that:

1. The goods to be supplied pursuant to this bid are fit and sufficient for the purpose intended;
2. The goods are merchantable, of good quality, and free from defects, whether patent or latent, in material or workmanship; and
3. The goods sold to The City of Hamilton, Ohio pursuant to this bid conform to the minimum The City of Hamilton, Ohio specifications as established herein.

The successful bidder shall further warrant that he has title to the goods supplied and that the goods are free and clear of all liens, encumbrances, and security interests. All warranties made by the successful bidder, together with service warranties' and guarantees shall run to The City of Hamilton, Ohio and its successors and assigns.

Service Calls in the First One Year Period: The successful bidder shall bear all costs for mileage, travel time, and service trucks used in the servicing (including repairs) of any of the goods to be purchased by The City of Hamilton, Ohio, pursuant to this bid for as many service calls as are necessary for the first one (1) year period after said goods are first supplied and installed to The City of Hamilton, Ohio.

****PLEASE CALL IF YOU HAVE ANY QUESTIONS – TYLER DUNLAP AT (419) 293-5257 OR EMAIL AT tyler@ergobio.com**

3. BID SECURITY FORM

BID BOND

KNOW ALL MEN BY THESE PRESENTS, that we, the bidder (hereafter identified as "principal"), and the undersigned surety, are hereby held and firmly bound unto the City of Hamilton, Ohio (identified hereafter as "obligee") in the penal sum of the dollar amount of the bid submitted by the principal to the obligee to undertake the proposal to which this Bid Security Form is attached. The penal sum referred to herein shall be the dollar amount of the principal's bid to the obligee, incorporating any additive or deductive alternate proposals made by the principal to the obligee, which are accepted by the obligee.

For the payment of the penal sum well and truly to be made, principal and surety hereby jointly and severally bind themselves, their heirs, executors, administrators, successors and assigns.

THE CONDITION OF THE ABOVE OBLIGATION IS SUCH, that whereas the above named principal has submitted a bid for the proposal to which this form is attached.

Now, therefore, if the obligee accepts the bid of the principal and the principal either fails or refuses to enter into a contract in accordance with the bid, plans, details, specifications and bills of material; then this undertaking shall be void if:

1. the principal pays to the obligee the difference (not to exceed ten percent of the penalty hereof) between the amount specified in the bid and such larger amount for which the obligee may in good faith contract with the next lowest bidder to perform the work covered by the bid; or,
2. in the event the obligee does not award the contract to the next lowest bidder and resubmits the project for bidding, the principal pays to the obligee the difference (not to exceed ten percent of the penalty hereof) between the amount specified in the bid, or the costs, in connection with the resubmission, of printing new contract documents, required advertising and printing and mailing notices to prospective bidders, whichever is less.

If the obligee accepts the bid of the principal and the principal within ten days after the awarding of the contract enters into an enforceable contract with obligee in accordance with the bid, plans, details, specifications and bills of material, which contract shall be a part of this bond the same as though set forth herein, then this obligation shall be null and void. Otherwise, the obligation shall remain in full force and effect.

Signed this _____ day of _____, _____.

SURETY:

PRINCIPAL:

Address: _____

Name: _____

Title: _____

Phone: _____

Principal's Full Name _____

By: _____

Name of Attorney in Fact

☐ Corporation ☐ Partnership ☐ Sole Proprietorship

For: _____

Name of Surety Company

*Note: Attorney in fact shall attach proof of authorization by Surety to execute bonds on behalf of the identified Surety. Failure to do so shall result in the Bond being considered incomplete.

Approved as to Form
Hillary M. Stevenson, Law Director
City of Hamilton, Ohio

CERTIFIED CHECK

(Attach Actual Check and a Copy of Check)

If certified check is deposited instead of the above bond, fill out the following:

Certified check for _____ Dollars
on the Bank of _____ deposited herewith.

(Bidder)

4. NON-COLLUSION AFFIDAVIT

State of _____)
County of _____) SS:

The undersigned being first duly sworn as provided by law, deposes and says:

1. His Name is _____ residing at _____ and his office is located at _____.

2. He makes this affidavit with the knowledge and intent that it is to be filed with the City of Hamilton, Ohio, and that it will be relied upon by said City in any consideration, which it may give to, and any action, which it may take with respect to this proposal.

3. He makes and is authorized to make this affidavit on behalf of:

_____ a ☐ Corporation, ☐ Partnership, ☐ Sole
(Name of Corporation, Partnership, Individual, etc.),
Proprietorship, or ☐ Other: _____ formed under the laws of
_____ (please specify)
the State of _____, of which he is ☐ Sole Owner, ☐ Partner, ☐ President, or
☐ Other: _____.
(please specify)

4. Neither the undersigned nor any other person, firm or corporation, named in above paragraph 3 nor anyone else to the knowledge of the undersigned, have themselves solicited or employed anyone else to solicit favorable action for this proposal by the City; also that no head of any department or employee therein, or any officer of the City of Hamilton is directly or indirectly interested therein.

5. This proposal is genuine and not collusive or a sham; the person, firm or corporation named above in paragraph 3 has not colluded, conspired, connived or agreed directly or indirectly with any bidder or person, firm or corporation to put in a sham proposal, or that such other person, firm or corporation shall refrain from bidding, and has not in any manner, directly or indirectly, sought by agreement or collusion, or communication or conference with any person, firm or corporation, to fix the unit prices of said proposal or proposals of any other bidder, or to secure any advantage against the City of Hamilton or any person, firm or corporation interested in the proposed contract; all statements contained in the proposal or proposals described above are true; and

Further, neither the undersigned, nor the person, firm or corporation named above in paragraph 3, has directly or indirectly submitted said proposal or the contents thereof, or divulged information or data relative thereto, to any association, or to any member or agent thereof.

(Affiant)

Sworn to before me and subscribed in my presence this _____ day of _____,
_____.

(Notarial Seal)

Notary Public

**5. DECLARATION OF PERSONAL PROPERTY TAX DELINQUENCY
PER ORC §5719.042**

State of _____)
County of _____) SS:

I, _____ hereby affirm that _____
(Name) (Name of Firm)
Bidder, herein, IS ☐ IS NOT ☐ charged at the time of submitting this Bid with any delinquent personal property
(check one)
taxes on the general tax list of personal property of the County of Butler.

The amount of such due and unpaid delinquent tax and any due and unpaid penalties and interest is
\$ _____.

Signature

Title

Date

Sworn to before me and subscribed in my presence this _____ day of _____,
_____.

(Notarial Seal)

Notary Public

6. STATEMENT OF BIDDER'S QUALIFICATIONS

State of _____)
County of _____) SS:

(To be submitted by the Bidder only upon the specific request of the City)

All questions must be answered and the data given must be clear and comprehensive. This statement must be notarized. If necessary, questions may be answered on separate attached sheets. The Bidder may submit any additional information he desires.

1. Name of Bidder.
2. Permanent main office address.
3. When organized.
4. If a corporation, where incorporated.
5. How many years have you been engaged in the contracting business under your present firm or trade name?
6. Contracts on hand: (schedule these, showing amount of each contract and the appropriate anticipated dates of completion).
7. Do you possess Operator Qualification of Contractor Personnel in accordance with Federal Pipeline Safety Regulations defined in 49 CFR Part 192, Subpart N.
8. Have you ever failed to complete any work awarded to you? If so, where and why?
9. Have you ever defaulted on a contract? If so, where and why?
10. List the more important projects recently completed by your company, stating the approximate cost for each, and the month and year completed.
11. List your major equipment available for this contract.
12. Experience in construction work similar in importance to this project.
13. Background and experience of the principal members of your organization, including the officers.
14. Give Bank reference.
15. Will you, upon request, fill out a detailed financial statement and furnish any other information that may be required by the City of Hamilton, Ohio.

The undersigned hereby authorizes and requests any person, firm, or corporation to furnish any information requested by the City of Hamilton, Ohio, in verification of the recitals comprising this Statement of Bidder's Qualifications.

Dated at _____ this _____ day of _____, _____.

Company

By: _____

Title

_____ being duly sworn, deposes and says that he is _____
of _____ and that the answers to the foregoing questions and all
statements therein contained are true and correct.

(Affiant)

Sworn to before me and subscribed in my presence this _____ day of _____, _____.

(Notarial Seal)

Notary Public

VI. CONTRACT SECTION

1. CONTRACT FORM #10-67

THIS CONTRACT, made the _____ day of _____, _____ by and between _____, hereafter called the "**Contractor**" and the City of Hamilton, Ohio, hereafter called the "**City**".

WITNESSETH, That in consideration of the mutual promises of the parties herein contained, the Contractor agrees to sell and the City agrees to purchase Supplies and/or Services described in these Contract Documents, all in strict accordance with the Specifications, including any and all Addenda, and in strict compliance with the Contractor's Proposal and the Other Sections of the Contract Documents herein mentioned which are a part of this Contract, and the Contractor shall provide everything required by this Contract and the other documents constituting a part hereof.

City agrees to pay the Contractor for the performance of this Contract subject to any additions or deductions provided therein, in current funds, the Contract price computed as shown in the Contractor's Proposal.

This Contract consists of the following component parts, all of which are as fully a part of this Contract as if herein set out verbatim, or if not attached, as if hereto attached:

- (1) Addendum Nos. _____, _____, and _____.
- (2) Advertisement for Bids
- (3) Specifications
- (4) Instructions for Submitting Bids, Standard Terms and Conditions, General Definitions
- (5) Contractor's Proposal
- (6) This Instrument

IN WITNESS WHEREOF, the City of Hamilton, Ohio, by Mark Brandenburger, its City Manager, and _____, have hereunto set their hands the day and year first above-mentioned.

CITY OF HAMILTON, OHIO

Witness

By: _____
Joshua Smith, City Manager
City of Hamilton, Ohio

Witness

By: _____

APPROVED AS TO FORM:

Hillary M. Stevenson, Director of Law
City of Hamilton, Ohio

2. CERTIFICATE OF DIRECTOR OF FINANCE

CERTIFICATE OF AVAILABILITY OF FUNDS

In accordance with the Hamilton City Charter, Section 8.01, it is hereby certified that the amount of

\$ _____ required to meet the contract, agreement, obligation,
(Total Dollar Amount)

payment, or expenditure with _____
(Vendor/Contractor)

for _____
(Contract Number and Contract Title)

has been lawfully appropriated or authorized or directed for such purpose and is in the City

Treasury or in the process of collection to the credit of the City's Fund and Accounts

_____ free from any
(Fund and Fund Codes)

obligation or certification now outstanding. Such appropriation has been encumbered through

the issuance of purchase order _____.
(Purchase Order Number)

Dated: _____
(Seal)

Director of Finance
City of Hamilton! Ohio

Standard Certificate

3. DECLARATION OF HAMILTON CITY INCOME TAX ACCOUNT AFFIDAVIT

The undersigned Bidder hereby affirms that such Bidder has secured Hamilton City Income Tax Account Number _____ with the City of Hamilton Income Tax Department located at 345 High Street, Hamilton, Ohio 45011, Phone Number (513) 785-7400 prior to undertaking any activity under this contract that would result in local taxable income earned inside the City limits of Hamilton.

Name of Bidder

Signature on Behalf of Bidder

Title

Phone Number

Date

Bidder's Social Security Number

Bidder's Federal Identification Number

State of _____)
County of _____) SS:

Sworn to, subscribed and acknowledged before me a Notary Public for the State of _____
this _____ day of _____, _____ by _____
for and on behalf of _____.

(Notarial Seal)

Notary Public

This instrument prepared by Hillary M. Stevenson, Esq., Director of Law, City of Hamilton, Ohio, One Renaissance Center, 345 High Street, Hamilton, Ohio 45011, (513) 785-7180.

4. SUBSTANCE ABUSE TESTING

All contracts which, by virtue of Federal or State law, must include provisions for substance abuse testing are hereby required to comply with the provisions of Chapter 180 of the Codified Ordinances of the City of Hamilton entitled "Substance Abuse Testing for Certain Employees". The provisions of Chapter 180 of the Codified Ordinances of the City of Hamilton are hereby made a part of this contract as if they were attached.

The successful contractor is required to submit an affidavit certifying compliance to all pertinent Federal, State and Local rules, regulations, laws, etc., concerning "Substance Abuse Testing".

Private parties employed by the City to engage in activities which will extend over ninety (90) or more days in a three hundred and sixty-five (365) consecutive day period and involve activities for which State or Federal law or regulations require substance abuse testing; private employers who employ persons who provide safety sensitive functions for the City and private employers who are contractually engaged by the City to operate vehicles which require the operator of the vehicle to possess a CDL shall adopt an anti-drug policy which contains the same provisions as this Chapter with respect to prohibited conduct and substance abuse testing. No contractor's employee who is in violation of this Chapter may be employed on City property or operate a vehicle whose operator must possess a CDL on a City contracted project.

In addition to the above, all contractors working on Natural Gas projects must comply with the following:

We hereby certify that we will comply with the U. S. Department of Transportation, Office of Pipeline Safety Regulations pertaining to Drug Testing, Part 199, Paragraph 199.21.

Copies of the above referenced legislation are on file at the office of the Purchasing Agent, City of Hamilton, One Renaissance Center, 345 High Street, Hamilton, Ohio 45011.

Affidavit of Contractor or Subcontractor

State of _____)
County of _____) SS:

I, _____, _____ of
(Name of individual signing affidavit) (Title)
_____, do hereby certify that all provisions of the Substance Abuse
(Name of firm)
Testing section in connection with Contract # _____, _____
(Description of services provided)

_____ for the City of Hamilton, Ohio during the entire period of said contract is and will be in accordance with the Substance Abuse Testing section by the Contract Document.

(Signature of Owner or Agent)

Sworn to before me and subscribed in my presence this _____ day of _____, _____.

(Notarial Seal)

Notary Public

The above affidavit must be executed and sworn to by the officer or agent of the Contractor or Subcontractor who supervises the employees, before the owner will release the surety and/or make partial or final payments due under the terms of the Contractor. This affidavit must accompany all partial payment requests submitted by the Contractor.

5. DECLARATION OF MATERIAL ASSISTANCE/NON-ASSISTANCE TO TERRORIST

Ohio Department of Public Safety

Division of Homeland Security

<http://www.homelandsecurity.ohio.gov>

GOVERNMENT BUSINESS AND FUNDING CONTRACTS

In accordance with section 2909.33 of the Ohio Revised Code

DECLARATION REGARDING MATERIAL ASSISTANCE/NON-ASSISTANCE TO A TERRORIST ORGANIZATION

This form serves as a declaration of the provision of material assistance to a terrorist organization or organization that supports terrorism as identified by the U.S. Department of State Terrorist Exclusion List (see the Ohio Homeland Security Division website for a reference copy of the Terrorist Exclusion List).

Any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided. Failure to disclose the provision of material assistance to such an organization or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree.

For the purposes of this declaration, "material support or resources" means currency, payment instruments, other financial securities, funds, transfer of funds, and financial services that are in excess of one hundred dollars, as well as communications, lodging, training, safe houses, false documentation or identification, communications equipment, facilities, weapons, lethal substances, explosives, personnel, transportation, and other physical assets, except medicine or religious materials.

LAST NAME	FIRST NAME	MIDDLE INITIAL	
HOME ADDRESS			
CITY	STATE	ZIP	COUNTY
HOME PHONE		WORK PHONE	

COMPLETE THIS SECTION ONLY IF YOU ARE A COMPANY, BUSINESS OR ORGANIZATION

BUSINESS/ORGANIZATION NAME			
BUSINESS ADDRESS			
CITY	STATE	ZIP	COUNTY
PHONE NUMBER			

DECLARATION

In accordance with division (A)(2)(b) of section 2909.32 of the Ohio Revised Code

For each question, indicate either "yes," or "no" in the space provided. Responses must be truthful to the best of your knowledge.

1. Are you a member of an organization on the U.S. Department of State Terrorist Exclusion List?

☐ Yes ☐ No

2. Have you used any position of prominence you have with any country to persuade others to support an organization on the U.S.

Department of State Terrorist Exclusion List?

☐ Yes ☐ No

GOVERNMENT BUSINESS AND FUNDING CONTRACTS - CONTINUED

3. Have you knowingly solicited funds or other things of value for an organization on the U.S. Department of State Terrorist

Exclusion List?

☐ Yes ☐ No

4. Have you solicited any individual for membership in an organization on the U.S. Department of State Terrorist Exclusion List?

☐ Yes ☐ No

5. Have you committed an act that you know, or reasonably should have known, affords "material support or resources" to an organization on the U.S. Department of State Terrorist Exclusion List?

☐ Yes ☐ No

6. Have you hired or compensated a person you knew to be a member of an organization on the U.S. Department of State Terrorist

Exclusion List, or a person you knew to be engaged in planning, assisting, or carrying out an act of terrorism?

☐ Yes ☐ No

In the event of a denial of a government contract or government funding due to a positive indication that material assistance has been provided to a terrorist organization, or an organization that supports terrorism as identified by the U.S. Department of State Terrorist Exclusion List, a review of the denial may be requested. The request must be sent to the Ohio Department of Public Safety's Division of Homeland Security. The request forms and instructions for filing can be found on the Ohio Homeland Security Division website.

CERTIFICATION

I hereby certify that the answers I have made to all of the questions on this declaration are true to the best of my knowledge. I understand that if this declaration is not completed in its entirety, it will not be processed and I will be automatically disqualified. I understand that I am responsible for the correctness of this declaration. I understand that failure to disclose the provision of material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List, or knowingly making false statements regarding material assistance to such an organization is a felony of the fifth degree. I understand that any answer of "yes" to any question, or the failure to answer "no" to any question on this declaration shall serve as a disclosure that material assistance to an organization identified on the U.S. Department of State Terrorist Exclusion List has been provided by myself or my organization. If I am signing this on behalf of a company, business or organization, I hereby acknowledge that I have the authority to make this certification on behalf of the company, business or organization referenced on page 1 of this declaration.

X _____
Signature

Date