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102 Enterprise Drive • PO Box 448 • Hillsboro, WI 54634
(800) 236-0448 • Fax (608) 489-2389 • www.metcohq.com

Submitted To: Gary Thurk and Dale Hexom
Company: City of La Crosse
Address: 2000 Marco Drive
City/State/Zip: La Crosse, WI 54601
Phone/Email: thurkg@cityoflacrosse.org

Project: AB Operator
Date: 01/06/15
Proposal No: 15AB0106AT
Prepared By: Adam Tukiendorf

CLASS A/B OPERATOR AGENT AGREEMENT

The purpose of this agreement is to implement the A & B operator training requirements issued by the U.S. Environmental Protection Agency in response to the Federal Energy Policy Act of 2005, as described in Wisconsin Administrative Code SPS310.800. This applies to all underground storage tank systems that are required to have a permit to operate from the department. In general, each new or existing underground storage tank system or group of underground storage tank systems at a facility shall have a Class A operator, a Class B operator and a Class C operator, as designated by the owner or operator.

Responsibilities of a Class A operator include all of the following:

- (a) Managing resources and personnel, such as establishing work assignments, to achieve and maintain compliance with regulatory requirements.
- (b) Ensuring that appropriate individuals do all of the following:
 1. Properly operate and maintain the underground storage tank system.
 2. Maintain appropriate records.
 3. Receive training to operate and maintain the underground tank system and keep records.
 4. Properly respond to emergencies or alarms relating to spills, leaks or releases from the underground storage tank system.
 5. Make financial responsibility documents available to the authorized agent as required.

Responsibilities of a Class B operator include ensuring that all of the following occur:

- (a) Requirements for leak or release detection methods, record keeping and reporting are met.
- (b) Requirements for leak or release prevention equipment, record keeping and reporting are met.
- (c) All relevant equipment complies with performance standards.
- (d) Appropriate individuals are trained to properly respond to emergencies or alarms relating to spills, leaks or releases from the underground storage tank system.
- (e) All Class C operators are provided with written instructions that include all of the following:
 1. Emergency response procedures, including all of the following:
 - a. Procedures for overfill protection during delivery of regulated substances.
 - b. Operation of emergency shut-off systems.
 - c. Appropriate responses to all alarms.
 - d. Reporting of leaks, spills and releases.
 - e. Any site-specific emergency procedures.
 2. The name and other information needed for contacting appropriate parties if a leak, spill, release or alarm occurs
- (f) A Class C operator is present during all operating hours of the underground tank system.

Included in this contract:

METCO will fulfill the requirements of the A/B operator by performing the following services for each site listed below.

1. La Crosse Service Center – 2000 Marco Drive, La Crosse WI 54601

AB Operator

- (1) Class A and Class B operator responsibilities

Monthly Inspections

- (11) Monthly UST System Inspection (PEI 900)
- (11) Monthly STI SP001 AST Inspection (ERS-10898-ERS)

Annual Inspections

- (2) Annual STI SP001 AST Inspection (ERS-10898-ERS)

Testing

- (2) Annual UST Functionality Verification (ERS-10778)
- (2) Line Leak Detector Testing (ERS-10778-LLD) [electronic]
- (4) Hose Continuity Testing

2. La Crosse Municipal Airport – 2810 Fanta Reed Road, La Crosse WI 54601

AB Operator

- (1) Class A and Class B operator responsibilities

Monthly Inspections

- (11) Monthly UST System Inspection (PEI 900)
- (11) Monthly STI SP001 AST Inspection (ERS-10897-ERS)

Annual Inspections

- (1) Annual STI SP001 AST Inspection (ERS-10898-ERS)

Testing

- (2) Annual UST Functionality Verification (ERS-10778)
- (1) Hose Continuity Testing

3. La Crosse Center Exhibition Hall, 300 Harborview Plaza, La Crosse WI 54601

AB Operator

- (1) Class A and Class B operator responsibilities

Testing

- (1) Annual UST Functionality Verification (ERS-10778)

Excluded from this contract:

1. Service related emergencies and/or repairs.
2. Monthly compliance inspections at the La Crosse Center Exhibition Hall location.
3. Class C responsibilities.
Responsibilities of a Class C operator include all of the following:
 1. Initially responding to alarms, spills, leaks, or releases.
 2. Notifying the Class B or Class A operator and appropriate emergency responders, including 911 personnel, when necessary.
 3. Controlling or monitoring the dispensing or sale of regulated substances.
4. Class C operator training and certification. METCO provides this training and is billed at \$50/hr plus mileage.

Expectations of the Owner/Operator:

1. Provide a contact person to assist METCO with needed information.
2. Maintain documentation at the tank site and have it immediately available for inspection.
3. Perform their own monthly compliance inspections at the La Crosse Center Exhibition Hall location and provide METCO with all inspection reports.

Locations Included in the Agreement:

1. City of La Crosse Service Center - 2000 Marco Drive, La Crosse WI 54601 (Site ID # - 648639)
Tank ID# 426844 – 12,000 Gal. Unleaded Gasoline UST
Tank ID# 426850 – 15,000 Gal. Diesel UST
Tank ID# 440095 – 4,000 Gal. Waste Oil AST
Tank ID# 440103 – 3,000 Gal. Diesel AST
2. La Crosse Municipal Airport - 2810 Fanta Reed Rd. La Crosse WI 54601 (Site ID # - 651605)
Tank ID# 408912 – 2,000 Gal. Diesel UST
Tank ID# 408913 – 1,000 Gal. Unleaded Gasoline UST
Tank ID# 205946 – 550 Gal. Waste Oil AST
3. La Crosse Center Exhibition Hall – 300 Harborview Plaza La Crosse WI 54601 (Site ID # - 651159)
Tank ID# 638612 – 2,500 Gal. Diesel UST

Agreement Terms:

1. This agreement is effective **January 1, 2016 through December 31, 2020.**
2. All applicable taxes will be added.
3. City of La Crosse's standard terms and conditions are made part of this agreement
4. Additional work or changes are subject to additional charges.
5. **AB operator service will be invoiced at the beginning of each contract year. Monthly inspection services will be invoiced monthly. Annual inspections will be invoiced at the time annual inspections are completed.**

Total Annual Cost for the City of LaCrosse AB Contract (2016-2020):

La Crosse Service Center, 2000 Marco Drive, La Crosse WI 54601	\$3,509.02	
La Crosse Municipal Airport, 2810 Fanta Reed Road, La Crosse WI 54601	\$3,182.22	
La Crosse Center Exhibition Hall, 300 Harborview Plaza, La Crosse WI 54601	\$579.36	
	Sub-total	\$7,270.60
	Customer Discount (5%)	-363.53
	TOTAL COST PER YEAR	\$6,907.07



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CONTRACT FOR SERVICES

The proposed prices, specifications and conditions are satisfactory and hereby accepted. METCO is authorized to do the work and the customer agrees to payment as outlined below. This contract shall be billed to the party whose signature appears below ("signer"). The person who signs this contract shall be responsible for payment according to METCO's terms described below. The signer agrees that the terms and conditions of this contract are based on State and Federal Laws in existence as of the date of this contract. The client shall be responsible for actual costs above and beyond the contract costs that are incurred by METCO as a result of complying with changes in the laws during the course of this contract. As used herein, METCO includes any affiliated corporation, subcontractors or any of their officers, directors, employees or agents.

TERMS

METCO holds the right to retain ten (10%) percent of the contract amount should the customer cancel the project. Project financing must be verified before any equipment is ordered. A down payment may be billed before the job commences on site in order to secure schedule dates and materials needed. All contract invoices are due upon receipt, and final payment on the contract balance is due no later than 10 days after startup unless other terms are arranged when the contract is signed. There shall be a 33% restocking fee if materials have been ordered and the job is canceled. Special ordered material invoices are due upon delivery to the job site or METCO's warehouse. Finance charges shall be added to all past due invoices (1.5% monthly, 18% annually). The prevailing party in any action or proceeding to enforce any provision of the Agreement will be awarded reasonable attorney's fees and costs in that action or proceeding or in efforts to resolve the matter. Any written documents, including but not limited to, reports, plans, assessments, etc., are prepared for, and for the sole use of the customer and the contents thereof may not be used or relied upon by any person without express written consent and authorization of METCO.

LIABILITY

The customer acknowledges that METCO has had no role in the generating, handling, treating, transporting or dispensing of hazardous waste which may be found on the project and is, therefore, not a "covered person" for purposes of CERCLA's 107(a). METCO's services shall be governed by the negligence standard for professional services, measured as of the time those services are rendered. METCO assumes no responsibility for unavoidable contamination caused by sub-service sampling or other investigations conducted under the terms of this agreement.

SERVICE/CONSTRUCTION LIEN

As required by Wisconsin Construction Lien Law, METCO hereby notifies the owner that persons or companies furnishing labor or materials for the construction and/or service on the owner's land may have lien rights on the owner's land or building if not paid. Those entitled to lien rights, in addition to METCO, are those who contract directly with the owner or those who give the owner notice within 60 days after they first furnished labor or materials for construction and/or service. Accordingly, the owner may receive notice from those who furnish labor or materials for construction and/or service and should give a copy of each notice received to the mortgage lender, if any. METCO agrees to cooperate with the customer and the customer's lender, if any, to see that all potential lien claimants are duly paid.

Contract Date: <u>01/06/15</u>	Customer Name: <u>City of LaCrosse</u> (Print) <u>DALE J. HEXON, P.E.</u> <u>DIRECTOR PUBLIC WORKS</u>	Project: <u>AB Operator</u>
Contract No: <u>15AB0106AT</u>	Authorized Signature: <u>Dale Hexon</u> (Customer)	Date: <u>5-4-15</u>
Contract Amt: <u>\$6,907.07</u> *Applicable taxes will be added	Authorized Signature: <u>Adam Tukendorf</u> (METCO) <u>AB operator</u>	Date: <u>5-7-15</u>

STANDARD TERMS AND CONDITIONS

1. **DEFINITIONS.** In this section "Contracting Party" shall mean any party that is entering into this Agreement with the City of La Crosse. "La Crosse" shall mean the City of La Crosse. These definitions shall apply only to this section titled "Standard Terms and Conditions" and shall not replace, modify or supersede any definitions used in other sections of this Agreement.

2. **STANDARD OF PERFORMANCE.** Contracting Party agrees that the performance of the services, pursuant to the terms and conditions of this Agreement, shall be performed in a manner consistent with the degree of care and skill ordinarily exercised by members of the same professions currently practicing under similar circumstances providing like services. Contracting Party agrees to abide by all applicable federal, state and local laws, regulations and ordinances, and all provisions of this Agreement.

3. **FULLY QUALIFIED.** Contracting Party represents that all personnel engaged in the performance of the services set forth in this Agreement shall be fully qualified and shall be authorized or permitted under state and local law to perform the services.

4. **SCOPE OF SERVICES.** Contracting Party is required to perform, do and carryout in a satisfactory, timely, and professional manner the services set forth in this Agreement. The Contracting Party is required to furnish all services and labor necessary as indicated in this Agreement, including without limitation materials, equipment, supplies, and incidentals. The scope of services to be performed shall include, without limitation, those services set forth in this Agreement. La Crosse may from time to time request the Contracting Party to perform additional services which are not set forth in this Agreement. In the event that such a request is made, the performance of such services shall be subject to the terms, conditions and contingencies set forth in this Agreement.

5. **CHANGE OF SCOPE.** The scope of service set forth in this Agreement is based on facts known at the time of the execution of this Agreement, including, if applicable, information supplied by Contracting Party. Scope may not be fully definable during initial phases. As projects progress, facts discovered may indicate that the scope must be redefined. Parties shall provide a written amendment to this Agreement to recognize such change.

6. **COMPENSATION.** Contracting Party will be compensated by La Crosse for the services provided under this Agreement and subject to the terms, conditions and contingencies set forth herein. Payments to Contracting Party for services rendered under this Agreement will be based on itemized invoices submitted on a monthly basis by the Contracting Party to La Crosse. These invoices must be itemized to include labor costs and the Contracting Party's direct expenses, including subcontractor costs. In addition, such invoices shall show the hours worked by the Contracting Party's staff and the amount of work completed as a percentage of the work to be performed. The final payment of the balance due the Contracting Party for the completed service shall be made upon completion and acceptance of the services performed by the Contracting Party under this Agreement.

7. **TAXES, SOCIAL SECURITY, INSURANCE AND GOVERNMENT REPORTING.** Personal income tax payments, social security contributions, insurance and all other governmental reporting and contributions required as a consequence of the Contracting Party receiving payment under this Agreement shall be the sole responsibility of the Contracting Party.

8. **TERMINATION FOR CAUSE.** If, through any cause, the Contracting Party shall fail to fulfill in a timely and proper manner its obligations under this Agreement, or if the Contracting Party shall violate any of the covenants, agreements, or stipulations of this Agreement, La Crosse shall thereupon have the right to terminate this Agreement by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. In such event, all finished or unfinished documents, data, studies, surveys, drawings, maps, models, photographs, reports or other material related to the services performed by the Contracting Party under this Agreement for which compensation has been made or may be agreed to be made shall, at the option of La Crosse, become the property of La Crosse. Notwithstanding the foregoing, the Contracting Party shall not be relieved of liability to La Crosse for damages sustained by La Crosse by virtue of this Agreement by the Contracting Party, and La Crosse may withhold any payments to the Contracting Party for the purpose of setoff until such time as the exact amount of damages due to La Crosse from the Contracting Party is determined.

9. **TERMINATION FOR CONVENIENCE.** La Crosse may terminate this Agreement at any time and for any reason by giving written notice to the Contracting Party of such termination and specifying the effective date, at least ten (10) days before the effective date of such termination. If this Agreement is terminated by La Crosse pursuant to this provision, Contracting Party will be paid an amount which bears the same ratio to the total compensation as the services actually and satisfactorily performed bear to the total services of the Contracting Party covered by this Agreement, less payments for such services as were previously made. The value of the services rendered and delivered by Contracting Party will be determined by La Crosse.

10. **SAFETY.** Unless specifically included as a service to be provided under this Agreement, La Crosse specifically disclaims any authority or responsibility for general job site safety, or the safety of persons or property.

11. **DELAYS.** If performance of La Crosse's obligations is delayed through no fault of La Crosse, La Crosse shall be entitled to an extension of time equal to the delay.

12. **OPINIONS OF COST.** Any opinion of costs prepared by La Crosse is supplied for general guidance of Contracting Party only. La Crosse cannot guarantee the accuracy of such opinions as compared to actual costs to Contracting Party.

13. **USE OF LA CROSSE PROPERTY.** Any property belonging to La Crosse being provided for use by Contracting Party shall be used in a responsible manner and only for the purposes provided in this Agreement. No changes, alterations or additions shall be made to the property unless otherwise authorized by this Agreement.

14. **INSURANCE.** Contracting Party shall, at its sole expense, obtain and maintain in effect at all times during this Agreement the following insurance coverage:

- 1) Commercial General Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage;
- 2) Automobile Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury and property damage covering all vehicles to be used in relationship to this Agreement;
- 3) Umbrella Liability Insurance of not less than \$1,000,000.00 per occurrence for bodily injury, personal injury and property damage in excess of coverage carried for commercial general liability and automobile liability;
- 4) Professional Liability Insurance of not less than \$1,000,000.00 per claim and annual aggregate; and
- 5) To the extent that Contracting Party employs any employees or as otherwise required by law, Workers' Compensation and Employees' Liability Insurance with Wisconsin statutory limits.

On the certificate of insurance, La Crosse shall be named as an additional insured on any General Liability Insurance, Automobile Liability Insurance, and Umbrella Liability Insurance. The certificate must state the following: The City of La Crosse, its officers, agents, employees, and authorized volunteers shall be Additional Insureds. Prior to execution of the Agreement, Contracting Party shall file with La Crosse, a certificate of insurance signed by the insurer's representative evidencing the coverage required by this Agreement. Such evidence shall include an additional insured endorsement signed by the insurer's representative. Contracting Party shall provide La Crosse with a thirty (30) day notice prior to termination or cancellation of the policy. La Crosse reserves the right to require review and approval of the actual policy of insurance before it executes this Agreement.

15. **INDEMNIFICATION.** To the fullest extent allowable by law, Contracting Party hereby indemnifies and shall defend and hold harmless, at Contracting Party's expense, La Crosse, its elected and appointed officials, committee members, officers, employees or authorized representatives or volunteers, from and against any and all suits, actions, legal or administrative proceedings, claims, demands, damages, liabilities, losses, interest, attorney's fees (including in-house counsel legal fees), costs and expenses of whatsoever kind, character or nature whether arising before, during, or after completion of the Agreement hereunder and in any manner directly or indirectly caused or contributed to in whole or in part, by reason of any act, omission, fault, or negligence, whether active or passive of Contracting Party, or of anyone acting under its direction or control or on its behalf in connection with or incident to the performance of this Agreement, regardless if liability without fault is sought to be imposed on La Crosse. Contracting Party's aforesaid indemnity and hold harmless agreement shall not be applicable to any liability caused by the willful misconduct of La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers. Nothing in this Agreement shall be construed as La Crosse waiving its statutory limitation and/or immunities as set forth in the applicable Wisconsin Statutes or other applicable law. This indemnity provision shall survive the termination or expiration of this Agreement.

Contracting Party shall reimburse La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers for any and all legal expenses and costs incurred by each of them in connection therewith or in enforcing the indemnity herein provided. Contracting Party's obligation to indemnify shall not be restricted to insurance proceeds, if any, received by La Crosse, its elected and appointed officials, officers, employees or authorized representatives or volunteers.

16. **NO PERSONAL LIABILITY.** Under no circumstances shall any trustee, officer, official, commissioner, director, member, partner or employee of La Crosse have any personal liability arising out of this Agreement, and Contracting Party shall not seek or claim any such personal liability.

17. **INDEPENDENT CONTRACTORS.** The parties, their employees, agents, volunteers, and representative shall be deemed independent contractors of each other and shall in no way be deemed as a result of this Agreement to be employees of the other. The parties, their employees, agents, volunteers, and representatives are not entitled to any of the benefits that the other provides for its employees. The parties shall not be considered joint agents, joint venturers, or partners.

18. **GOVERNING LAW.** This Agreement and all questions and issues arising in connection herewith shall be governed by and construed in accordance with the laws of the State of Wisconsin. Venue for any action arising out of or in any way related to this Agreement shall be exclusively in La Crosse County, Wisconsin. Each party waives its right to challenge venue.

19. **JURY TRIAL WAIVER.** The parties hereby waive their respective rights to a jury trial on any claim or cause of action based upon or arising from or otherwise related to this Agreement. This waiver of right to trial by jury is given knowingly and voluntarily by the parties and is intended to encompass individually each instance and each issue as to which the right to a trial by jury would otherwise accrue. Each party is hereby authorized to file a copy of this section in any proceeding as conclusive evidence of this waiver by the other party.

20. **NOTIFICATION.** Contracting Party shall:

- (1) As soon as possible and in any event within a reasonable period of time after the occurrence of any default, notify La Crosse in writing of such default and set forth the details thereof and the action which is being taken or proposed to be taken by Contracting Party with respect thereto.
- (2) Promptly notify La Crosse of the commencement of any litigation or administrative proceeding that would cause any representation and warranty of Contracting Party contained in this Agreement to be untrue.
- (3) Notify La Crosse, and provide copies, immediately, upon receipt, of any notice, pleading, citation, indictment, complaint, order or decree from any federal, state or local government agency or regulatory body, asserting or alleging a circumstance or condition that requires or may require a financial contribution by Contracting Party or any guarantor or an investigation, clean-up, removal, remedial action or other response by or on the part of Contracting Party or any guarantor under any environmental laws, rules, regulations, ordinances or which seeks damages or civil, criminal or punitive penalties from or against Contracting Party or any guarantor for an alleged violation of any environmental laws, rules, regulations or ordinances.

21. **SEVERABILITY.** The provisions of this Agreement are severable. If any provision or part of this Agreement or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unconstitutional for any reason, the remainder of this Agreement and the application of such provision or part thereof to other persons or circumstances shall not be affected thereby.

22. **ASSIGNMENT, SUBLET, AND TRANSFER.** Contracting Party shall not assign, sublet, or transfer its interests or obligations under the provisions of this Agreement without the prior written consent of La Crosse. This Agreement shall be binding on the heirs, successors, and assigns of each party hereto. Contracting Party shall provide not less than forty-five (45) days advance written notice of any intended assignment, sublet or transfer.

23. **NO WAIVER.** The failure of any party to insist, in any one or more instance, upon performance of any of the terms, covenants, or conditions of this Agreement shall not be construed as a waiver, or relinquishment of the future performance of any such term, covenant, or condition by any other party hereto but the obligation of such other party with respect to such future performance shall continue in full force and effect.

24. **SUBCONTRACTING.** None of the services to be performed under this Agreement shall be subcontracted without the prior written approval of La Crosse. If any of the services are subcontracted, the performance of such services shall be specified by written contract and shall be subject to each provision of this Agreement. Contracting Party shall be as fully responsible to La Crosse for the acts and omissions of its subcontractors and of person either directly or indirectly employed by them, as it is for acts and omissions of persons directly employed by it.

25. **CONFLICTS OF INTEREST.** Contracting Party covenants that it presently has no interest and shall not acquire any interest, direct or indirect, which would conflict in any manner or degree with the performance of its services hereunder. Contracting Party further covenants that in the performance of this Agreement no person having any conflicting interest shall be employed. Any interest on the part of Contracting Party or its employee must be disclosed to La Crosse

26. **NON-DISCRIMINATION.** Pursuant to law, it is unlawful and Contracting Party agrees not to willfully refuse to employ, to discharge, or to discriminate against any person otherwise qualified because of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed, or familial status; not to discriminate for the same reason in regard to tenure, terms, or conditions of employment, not to deny promotion or increase in compensation solely for these reasons; not to adopt or enforce any employment policy which discriminates between employees on account of race, color, religion, sex, creed, age, disability, national origin or ancestry, lawful source of income, marital status or familial status; not to seek such information as to any employee as a condition of employment; not to penalize any employee or discriminate in the selection of personnel for training, solely on the basis of race, color, religion, sex, sexual orientation, age, disability, national origin or ancestry, lawful source of income, marital status, creed or familial status.

Contracting Party shall include or cause to be included in each subcontract covering any of the services to be performed under this Agreement a provision similar to the above paragraph, together with a clause requiring such insertion in further subcontracts that may in turn be made.

27. **POLITICAL ACTIVITIES.** Contracting Party shall not engage in any political activities while in performance of any and all services and work under this Agreement.

28. **GOVERNMENTAL APPROVALS.** Contracting Party acknowledges that various of the specific undertakings of La Crosse described in this Agreement may require approvals from the City of La Crosse Council, City of La Crosse bodies, and/or other public bodies, some of which may require public hearings and other legal proceedings as conditions precedent thereto. Contracting Party further acknowledges that this Agreement is subject to appropriation by the La Crosse Common Council. La Crosse's obligation to perform under this Agreement is conditioned upon obtaining all such approvals in the manner required by law. La Crosse cannot assure that all such approvals will be obtained, however, it agrees to use good faith efforts to obtain such approvals on a timely basis.

29. **ENTIRE AND SUPERSEDING AGREEMENT.** This writing, all Exhibits hereto, and the other documents and agreements referenced herein, constitute the entire Agreement between the parties with respect to the subject matter hereof, and all prior agreements, correspondences, discussions and understandings of the parties (whether written or oral) are merged herein and made a part hereof. This Agreement, however, shall be deemed and read to include and incorporate such minutes, approvals, plans, and specifications, as referenced in this Agreement, and in the event of a conflict between this Agreement and any action of La Crosse, granting approvals or conditions attendant with such approval, the specific action of La Crosse shall be deemed controlling. To the extent that any terms and conditions contained in this Agreement, all Exhibits hereto, and the other documents and agreement referenced herein conflict with these Standard Terms and Conditions, the Standard Terms and Conditions shall take precedence.

30. **AMENDMENT.** This Agreement shall be amended only by formal written supplementary amendment. No oral amendment of this Agreement shall be given any effect. All amendments to this Agreement shall be in writing executed by both parties.

31. **IMPLEMENTATION SCHEDULE AND TIME OF THE ESSENCE.** Any and all phases and schedules which are the subject of approvals, or as set forth herein, shall be governed by the principle that time is of the essence, and modification or deviation from such schedules shall occur only upon approval of La Crosse. The Mayor, or in the Mayor's absence, the Council President, shall have the ability to postpone any deadline listed herein, up to a maximum of ninety (90) days.

32. **TIME COMPUTATION.** Any period of time described in this Agreement by reference to a number of days includes Saturdays, Sundays, and any state or national holidays. Any period of time described in this Agreement by reference to a number of business days does not include Saturdays, Sundays or any state or national holidays. If the date or last date to perform any act or to give any notices is a Saturday, Sunday or state or national holiday, that act or notice may be timely performed or given on the next succeeding day which is not a Saturday, Sunday or state or national holiday.

33. **NOTICES.** Any notice, demand, certificate or other communication under this Agreement shall be given in writing and deemed effective: a) when personally delivered; b) three (3) days after deposit within the United States Postal Service, postage prepaid, certified, return receipt requested; or c) one

(1) business day after deposit with a nationally recognized overnight courier service, addressed by name and to the party or person intended as follows:

To the City:	Attn. City Clerk City of La Crosse 400 La Crosse Street La Crosse, WI 54601	Copy to:	Attn. City Attorney City of La Crosse 400 La Crosse Street La Crosse, WI 54601
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Contracting party shall identify in writing and provide to La Crosse the contact person and address for notices under this Agreement.

34. **INCORPORATION OF PROCEEDINGS AND EXHIBITS.** All motions adopted, approvals granted, minutes documenting such motions and approvals, and plans and specifications submitted in conjunction with any and all approvals as granted by La Crosse, including but not limited to adopted or approved plans or specifications on file with La Crosse, and further including but not limited to all exhibits as referenced herein, are incorporated by reference herein and are deemed to be the contractual obligation of Contracting Party whether or not herein enumerated.

35. **ACCESS TO RECORDS.** Contracting Party, at its sole expense, shall maintain books, records, documents and other evidence pertinent to this Agreement in accordance with accepted applicable professional practices. La Crosse, or any of its duly authorized representatives, shall have access, at no cost to La Crosse, to such books, records, documents, papers or any records, including electronic, of Contracting Party which are pertinent to this Agreement, for the purpose of making audits, examinations, excerpts and transcriptions.

36. **PUBLIC RECORDS LAW.** Contracting Party understands and acknowledges that La Crosse is subject to the Public Records Law of the State of Wisconsin. As such, Contracting Party agrees to retain all records as defined by Wisconsin Statute § 19.32(2) applicable to this Agreement for a period of not less than seven (7) years after the termination or expiration of this Agreement. Contracting Party agrees to assist La Crosse in complying with any public records request that La Crosse receives pertaining to this Agreement. Additionally, Contracting Party agrees to indemnify and hold harmless La Crosse, its elected and appointed officials, officers, employees, and authorized representatives for any liability, including without limitation, attorney fees related to or in any way arising from Contracting Party's actions or omissions which contribute to La Crosse's inability to comply with the Public Records Law. In the event that Contracting Party decides not to retain its records for a period of seven (7) years, then it shall provide written notice to La Crosse whereupon La Crosse shall take custody of said records assuming such records are not already maintained by La Crosse. This provision shall survive the termination of this Agreement.

37. **CONSTRUCTION.** This Agreement shall be construed without regard to any presumption or rule requiring construction against the party causing such instrument to be drafted. This Agreement shall be deemed to have been drafted by the parties of equal bargaining strength. The captions appearing at the first of each numbered section of this Agreement are inserted and included solely for convenience but shall never be considered or given any effect in construing this Agreement with the duties, obligations, or liabilities of the respective parties hereto or in ascertaining intent, if any questions of intent should arise. All terms and words used in this Agreement, whether singular or plural and regardless of the gender thereof, shall be deemed to include any other number and any other gender as the context may require.

38. **NO THIRD-PARTY BENEFICIARY.** Nothing contained in this Agreement, nor the performance of the parties hereunder, is intended to benefit, nor shall inure to the benefit of, any third party.

39. **COMPLIANCE WITH LAW.** The parties shall comply in all material respects with any and all applicable federal, state and local laws, regulations and ordinances.

40. **FORCE MAJEURE.** La Crosse shall not be responsible to Contracting Party for any resulting losses and it shall not be a default hereunder if the fulfillment of any of the terms of this Agreement is delayed or prevented by revolutions or other civil disorders, wars, acts of enemies, strikes, fires, floods, acts of God, adverse weather conditions, legally required environmental remedial actions, industry-wide shortage of materials, or by any other cause not within the control of the party whose performance was interfered with, and which exercise of reasonable diligence, such party is unable to prevent, whether of the class of causes hereinabove enumerated or not, and the time for performance shall be extended by the period of delay occasioned by any such cause.

41. **GOOD STANDING.** Contracting Party affirms that it is a company duly formed and validly existing and in good standing under the laws of the State of Wisconsin and has the power and all necessary licenses, permits and franchises to own its assets and properties and to carry on its business. Contracting Party is duly licensed or qualified to do business and is in good standing in the State of Wisconsin and in all other jurisdictions in which failure to do so would have a material adverse effect on its business or financial condition.

42. **AUTHORITY.** The persons signing this Agreement warrant that they have the authority to sign as, or on behalf of, the party for whom they are signing.

43. **EXECUTION OF AGREEMENT.** Contracting Party shall sign and execute this Agreement on or before sixty (60) days of its approval by the La Crosse Common Council, and Contracting Party's failure to do so will render the approval of the Agreement by the La Crosse Common Council null and void unless otherwise authorized.

44. **COUNTERPARTS.** This Agreement may be executed in one or more counterparts, all of which shall be considered but one and the same agreements and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other party.

45. **SURVIVAL.** All express representations, indemnifications and limitations of liability included in this Agreement will survive its completion or termination for any reason.

Revised: July 2011



City of La Crosse, Wisconsin

City Hall
400 La Crosse Street
La Crosse, WI 54601

File Complete

File Number: 15-0095

File ID: 15-0095	Type: Resolution	Status: Adopted
Version: 1	Reference:	In Control: Common Council
		File Created: 01/28/2015
File Name: METCO AB Tank		Final Action: 03/12/2015

Title: Resolution approving contract with METCO for fuel tank inspection.

Routing: BPW
F&P

Sponsors: Seaquist

Effective Date:

Attachments: Resolution, Standard Terms and Conditions, BPW
Ltr 2-23-15

Enactment Number:

Contact:

Hearing Date:

Drafter: hexomd@cityoflacrosse.org

Effective Date:

History of Legislative File

Ver- sion:	Acting Body:	Date:	Action:	Sent To:	Due Date:	Return Date:	Result:
1	Common Council	02/12/2015					
1	Board of Public Works	02/23/2015	APPROVED				Pass
1	Finance & Personnel Committee	03/05/2015	RECOMMENDED TO BE ADOPTED	Common Council	03/12/2015		Pass
1	Common Council	03/12/2015	ADOPTED				
Notes: 2015-03-026							

Text of Legislative File 15-0095

RESOLUTION

WHEREAS, the City of La Crosse Municipal Service Center, La Crosse Regional Airport, and the La Crosse Center have underground and aboveground storage tanks of various capacities for use with various types of fuel to serve the needs of equipment/staff, and

WHEREAS, Section 1524 of the Federal Energy Policy Act of 2005 requires implementing operator requirements for facilities that have federally-regulated underground storage tank systems of which includes the above mentioned storage tanks as described by the Department of Commerce Code 10.800, and

WHEREAS, the State of Wisconsin Department of Safety and Professional Services also has underground and aboveground storage tank compliance requirements known as ERS10778 and AB Operator, and

WHEREAS, the City of La Crosse has contracted with METCO to ensure the above Federal and State requirements are met on a year-to-year basis, as approved by the Board of Public Works, to maintain compliance, and

WHEREAS, METCO has performed without fault on behalf of the City of La Crosse to maintain compliances as required, and

WHEREAS, the City of La Crosse Fuel Management Team believes it efficient and prudent to have in place a multi-year(2016 through 2020) contract to provide the needed services to maintain Federal and State fuel storage compliance as required, and

WHEREAS, METCO has agreed to continue to provide the above compliance services for a period of five(5) years(2016 through 2020) at current costs of \$7,457.46/year with no future price increases.

NOW, THEREFORE, BE IT RESOLVED by the City of La Crosse Common Council that it hereby approves the City of La Crosse to contract with METCO, for a period of five(5) years(2016 through 2020), to continue Federal and State required fuel storage compliance as needed.

BE IT FURTHER RESOLVED that the Fuel Management Team, the Director of Public Works, the Board of Public Works, or the Interim Director of Finance are hereby authorized to take any and all steps necessary to effectuate this resolution.



Teri Lehrke, WCPC, City Clerk
400 La Crosse Street
La Crosse, Wisconsin 54601
Phone (608) 789-7510
Fax (608) 789-7552
www.cityoflacrosse.org

February 23, 2015

The Honorable Mayor
And Common Council Members

Re: 15-0095 Resolution approving contract with METCO for fuel tank inspection

Ladies and Gentlemen:

The Board of Public Works considered the above matter at their meeting today, and recommended the same be adopted.

Sincerely,

Tim Kabat, President

/tll