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Kimberly, WI 54136 Wausau, WI 54401 West Allis, WI 53214 Fort Worth, TX 76106

PROPOSAL

Proposal Date: April 16, 2024

Proposal Number: TB104044AB

Proposal Expiration: 15 Days from proposal date

Business Consultant: Todd Broeckel

ETS Customer #:

124572

Proposal for:

City of Appleton Finance Dept.

PO Box 2428

Appleton, WI 54912-2428

Site address:

City of Appleton - Municipal Services

2625 E Glendale Ave

Appleton, WI 54911

Contact: Bruce Brazee

Phone: (920) 832-1559

Email: bruce.brazee@appleton.org

EnergiTech Services (ETS) is pleased to provide a proposal to complete the following work:

Provide factory authorized services to supply and install the FMLive upgrade for the City of Appleton Fuelmaster fuel management system (FMS).

FMS UPGRADE (HARDWARE AND MANUFACTURER'S SERVICES):

(2)	SYNTECH FMLIVE UPGRADE, PROKEE/AIM, CELLULAR COMM (UPG4715).	\$	15,644.00
(2)	ADVANCED SURGE PROTECTION (144F0250)	\$	1,619.20
(1)	TANK MONITOR INTERFACE (WIRELESS 191F0223)	\$	1,225.50
	WILL REQUIRE 120 VAC OUTLET (BY APPLETON) AT TANK MONITOR FOR POWER CONVERTER.		
(1)	FMLIVE SUBSCRIPTION - CELLULAR ENABLED EQUIPMENT	\$	5,280.00
(1)	FMLIVE SETUP/ACTIVATION (ONE TIME, CLOUDBA/2)	\$	700.00
(1)	FMLIVE PROJECT MANAGEMENT (PMLIVEBA/2+BI+CELL)	\$	733.50
(1)	FMLIVE IMPORT (ONE TIME, CONSTRUCTION AND/OR CONVERSION, FMLIVE IMPORT)	\$	2,350.00
(1)	FMLIVE CUSTOM EXPORT (ONE TIME, INITIAL EXPORT ONLY)	\$	1,565.00
◇	FREIGHT	\$	580.00
(1)	2ND PUMP CONTROLLER, OMEGA JR	\$	3,066.00
(1)	UNIVERSAL D-BOX BOARD	\$	174.00

PLEASE NOTE:

- ◇ Fuelmaster 1 year factory warranty included.
- ◇ One time FMLive training webinar by SynTech training department. Additional training available upon request.
- ◇ This upgrade utilizes the existing Fuelmaster FMU island pedestals.

INSTALLATION:

-	ENERGITECH SERVICES FACTORY TRAINED TECHNICIAN SERVICES FOR HARDWARE INSTALLATION.		
◇	TECHNICIAN SERVICES FOR UPGRADING EXISTING OMEGA JR PUMP CONTROLLER FIRMWARE. ON 04-02-24, 2.5 HRS @ \$100.00/HR. PLUS SERVICE TRIP FEE ADDED BELOW.	\$	250.00
◇	ESTIMATED LABOR FOR FUELMaster PROKEE, AIM FMU UPGRADE WITH FMLIVE HARDWARE, 8 HOURS ALLOWANCE @ \$100.00/HR. EACH.	\$	800.00
◇	ESTIMATED LABOR FOR INSTALLATION OF TANK MONITOR INTERFACE AND ADVANCED SURGE PROTECTION. 4 HOURS ALLOWANCE @ \$100.00/HR.	\$	400.00
◇	ESTIMATED LABOR FOR TESTING AND VERIFICATION OF FMLIVE UPGRADE. 4 HOURS ALLOWANCE @ \$100.00/HR.	\$	400.00
◇	SERVICE TRIP FEE @ \$100.00 EACH. ALLOWANCE FOR THREE VISITS.	\$	300.00

PLEASE NOTE:

- ◇ Does not include any services, equipment or materials not specifically mentioned in this proposal.
- ◇ EnergiTech Services installation fees will be billed T&M based on the aforementioned service rates.

	SUBTOTAL FOR THE ABOVE PROPOSAL	\$	35,087.20
	APPLICABLE SALES TAX (T & WT)	Exempt	
	TOTAL FOR PROPOSAL	\$	35,087.20

Attached terms and conditions apply.

PROPOSAL NOTES:

- ◇ Attached terms and conditions apply.
- ◇ Proposal based on working from 7:30am - 4:00pm, Monday through Friday.
- ◇ We will be utilizing the existing Fuelmaster FMU island pedestals .
- ◇ This proposal is based on two visits to the site for the technician to install the FMLive upgrade complete.
- ◇ If an additional trip is needed for completion because of unforeseen problems with faulty existing equipment or delays due to services supplied by the City of Appleton or others, then additional labor, materials, and mileage will be due and billed accordingly.

ITEMS NOT INCLUDED WITH THIS PROPOSAL:

- ◇ Any equipment, material, or services not listed in the above scope of work.

Thank you for considering EnergiTech Services for your service and equipment needs.

TOTAL FOR THE ABOVE PROJECT \$ 35,087.20

Proposed Payment Terms:

50% Payment due **Net 10 days** from **Contract Signing Date**.
50% Invoiced upon completion. Payment due **Net 10 days** from **Project Completion Date**.
Terms are subject to credit approval.

***This proposal may be withdrawn by
EnergiTech Services if not accepted in: 15 Days from proposal date***

This Proposal is subject to the terms and conditions set forth herein, as well as the attached Standard Terms and Conditions (collectively, this Proposal and the Standard Terms and Conditions shall hereafter be referred to as the "Agreement").

If EnergiTech Services is required to perform under different terms and conditions, a change order may be required.

CUSTOMER ACCEPTANCE OF PROPOSAL

The prices, specifications, terms and conditions as set forth above and attached are satisfactory and hereby accepted as the Agreement. EnergiTech Services is authorized to do the work as specified. Payment will be made as outlined above and in the attached Standard Terms and Conditions.

The undersigned individual, who is either a principal of the Customer or a sole proprietor, recognizing that his or her individual credit history may be a factor in the evaluation of the credit history of the applicant, hereby consents to and authorizes the use of a consumer credit report on the undersigned by EnergiTech Services from time to time as may be needed, in the credit evaluation process.

Customer

EnergiTech Services

Signature

Signature

Printed Name

Printed Name

Title

Title

Date

Date

TERMS & CONDITIONS OF EnergiTech Services LLC

Acceptance of Proposal. The accompanying Proposal, when accepted by Customer, will constitute a contract between EnergiTech Services LLC ("ETS") and Customer, subject to all terms and conditions that follow herein and the approval of ETS's credit manager. Delivery of the materials/equipment herewith, installation of the specified equipment, Customer's acceptance in writing, and/or the issuance of an invoice, constitutes a binding acceptance by the Customer of the proposal herein. It is expressly agreed that there are no promises, agreements, or understandings, oral or written, not specified in the Proposal and these Terms and Conditions.

Scope of Work and Payment. All equipment and services shall be provided as set forth in the Proposal. ETS shall be paid for work performed as follows:

1. Terms for services, unless otherwise specified in the Proposal, are 1/3 with signed Proposal, 1/3 at commencement of work, and 1/3 upon receipt of final invoice, with payment terms of net ten (10) days from Customer's receipt of invoice.
2. Terms on the invoice unless otherwise specified in the Proposal, are net ten (10) days from Customer's receipt of invoice.
3. In the event ETS has not received payment for all fees and cost according to the terms of the invoice, Customer agrees to pay a late payment fee on the unpaid invoice balance at the rate of 2% per month commencing upon the expiration of the invoice terms and continuing until paid.
4. Customer also agrees that if payments are not received according to the terms of the invoice, a stoppage in completing a project may occur without ETS incurring any nonperformance or other legal liability.
5. Customer agrees to pay all costs incurred by ETS in enforcing the terms of this Agreement, including but not limited to, costs of its collection agency and reasonable attorney's fees.
6. Credit card payments are subject to 3% card processing fees.

Prices. Prices quoted are expressly contingent upon all conditions being observed, represented, and warranted at the time of bid. Prices quoted cover only those items which are specifically set forth in the Proposal. All other items will be billed to Customer on a time and materials basis. The prices quoted are for acceptance within fifteen (15) days of the date of Proposal, unless otherwise specified, and are subject to change without notice after that date. Prices quoted do not include soil analysis or clean-up of contamination, unless specifically stated. Labor, materials, and outside services for electrical, concrete, blacktop, excavating or sewer work, and such work not included in the Proposal unless specified. Additionally, required local permits are not included in the Proposal unless specified. Prices quoted on equipment and repair parts are subject to federal, state, and municipal taxes and licenses, which may be in effect, or which may be imposed prior to the actual shipment of materials and equipment. All such taxes and license costs are the responsibility of Customer.

Delivery. ETS will endeavor to maintain delivery dates and schedules but cannot guarantee them. ETS shall not be liable for any costs or damages of Customer under this provision, including, but not limited to, loss of profits or business.

Limited Warranty. All materials and equipment, whether new or used, are purchased "AS IS" from ETS. Products sold may be warranted by the manufacturer of the product but only to the extent of warranty offered by the manufacturer. Unless specifically stated in the Proposal, Customer shall register the equipment with the manufacturer. Any manufacturer warranties existing on new equipment furnished as part of the Proposal are passed through from ETS to Customer according to each manufacturer's policy, and in such cases, Customer's warranty shall be limited to that provided by the manufacturer(s). Ordinary use; wear and tear; or damage from abuse, neglect, accident, maladjustment, or failure by Customer to maintain equipment properly is excluded from coverage.

For a period of one (1) year from the date of completion of the project, ETS will at its sole discretion, install any equipment or materials covered by a manufacturer's warranty. If an item(s) is not covered by manufacturer's warranty, Customer may at its sole cost, pay for the equipment and materials and ETS (at its sole discretion) will install at no charge to the Customer. This labor warranty from ETS is null and void in the event the Customer or third party performs subsequent work on the equipment installed or repaired by ETS.

CUSTOMER AGREES TO RELEASE, INDEMNIFY, HOLD HARMLESS, AND DEFEND ETS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITY, AND CAUSES OF ACTION AT LAW OR EQUITY FOR LOSS, DAMAGE, INJURY OR DEATH TO PERSONS AND PROPERTY, INCLUDING BUT NOT LIMITED TO ENVIRONMENTAL CONTAMINATION, LEAKS, SPILLS, RELEASES, OR DISCHARGES BY WHATSOEVER OR HOWSOEVER CAUSE OR SOURCE, ARISING OR OCCURRING FROM ANY NEW OR USED EQUIPMENT RECEIVED FROM BY CUSTOMER FROM ETS.

THERE ARE NO WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY WARRANTIES OR MERCHANTABILITY OR OF FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE EQUIPMENT AND SERVICES DESCRIBED IN THE PROPOSAL.

Limitation of Liability. ETS shall be liable only for damages that are the sole negligence of ETS and that ETS's total liability (if caused by ETS's sole negligence) shall not exceed \$50,000.00, or the total fees payable to ETS for the particular project, whichever is less. ETS shall not be liable for any special, punitive, incidental, or consequential damages (including without limitation, loss of profits or income, loss of use of property, business interruption, cost of replacing goods or services, or third party claims.

Any claims, demands, or cause of action against ETS arising from or related to in any way to the Proposal, or to work, services, or goods or products provided by ETS pursuant to the Proposal, must be brought within one (1) year from the date the work, service or provision of goods or products has been completed.

Compliance with Laws. Environmental compliance is Customer's responsibility. Its failure to comply strictly with applicable federal, state or local requirements, rules and/or regulations (including but not limited to those applicable to notice) shall completely void all warranties of ETS. Customer agrees to hold ETS harmless from and indemnify and defend against any claims or liability relating to Customer's failure to comply strictly with any federal, state or local requirements, rules and/or regulations (including but not limited to those applicable to notice). All TSSA (Tank-System Site Assessment) documentation is to be reported on part A & B of the Department's Tank System Service and Closure Assessment. All original TSSA report documents (scaled drawing of the site, layout showing sample locations and excavations, lab reports, photos and parts A & B of form TR-WM-140) will be sent to the Environmental Program Associate in the corresponding DNR regional office upon completion of the report.

Insurance/ownership/registration. Customer is responsible for maintaining (or ensuring that the owner of the property maintains if Customer is not the owner), evidence of ownership of the property on which the Project is taking place, insurance on the property and equipment purchased from ETS, and registration of any such equipment as may be required to comply with any local, state and federal laws, regulations or industry standards.

Termination. ETS may, without prejudice to any right or remedy, terminate its relationship with Customer and suspend all work or delivery of goods upon notice to Customer.

Unforeseen Conditions. If unforeseen conditions arise that affect the scope of services, time for performance, or the risk involved, ETS shall notify Customer. ETS may then, at its sole discretion, modify the scope of work,

modify the price, stop work until arrangements satisfactory to ETS have been made, or terminate the services by notifying Customer in writing. ETS shall be entitled to compensation for its services performed through the time of termination. If abnormal soil conditions or weather conditions or other unforeseen conditions result in additional cost, those additional costs will be billed on a time and materials basis.

Jurisdiction and Venue. Customer agrees that this Proposal shall be governed by Wisconsin law and jurisdiction and venue will be the Outagamie County District Court of Wisconsin, or the Federal District Court Eastern District of Wisconsin (Green Bay Division).

Waiver of Right to Jury Trial. ETS AND CUSTOMER WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THE PROPOSAL OR ANY DEALINGS BETWEEN THEM RELATING TO THE SUBJECT MATTER OF THIS PROPOSAL. ETS AND CUSTOMER ACKNOWLEDGE THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO THIS AGREEMENT. THIS WAIVER IS IRREVOCABLE, MEANING THAT IT SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS OR MODIFICATIONS TO THIS AGREEMENT OR TO ANY OTHER DOCUMENTS OR AGREEMENTS RELATING TO THE TRANSACTION CONTEMPLATED HEREBY. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Utilities and Underground Structures. ETS will take reasonable precautions to avoid damage to utilities or other underground structures. Customer shall indemnify, defend, and hold ETS harmless for any damage to utilities or underground structures, and from any claims, liability, or damages resulting from utilities or underground structures that were not properly called to ETS's attention. Such indemnity shall include payment of litigation costs, expert's fees, and attorney's fees incurred by ETS.

Duties of the Customer. Customer warrants that it has disclosed all adverse or unfavorable site conditions which may affect this Proposal. Customer represents and warrants that all information provided to ETS is complete and accurate. Customer represents and warrants it has and will comply with all applicable local, state, and federal laws. Customer shall protect the site against damage, injury, or loss and shall carry insurance in an amount sufficient to cover replacement values, naming ETS as loss payee and additional insured. Customer is responsible for providing Builder's Risk insurance coverage. Customer is responsible for providing liquid ballast for filling underground storage tanks immediately upon setting the tanks during excavation. ETS shall not be liable for damage to the ballast, including without limitation, damage due to contamination or loss of product. Customer shall keep accurate, daily inventory records on products stored in tanks, lines, and dispensing equipment and shall promptly notify ETS of all shortages or losses. Precision testing procedures performed on any portion of the underground storage tank systems are designed to detect leaks and ETS shall not be responsible for any contamination resulting from spills or releases which may occur before, during or after such tests.

PCI/EMV /Security Standard Requirements. This Proposal may include components to assist with implementing a program to maintain compliance with PCI security standard requirements, but may not provide the entire solution. Additional items such as software, network gateways, and secure routers may be needed to provide full compliance. Periodic inspection of devices and components, along with tracking these assets, and ensuring a secure network with limited access is also an important part of maintaining compliance with the standards. If additional components, software or equipment are required, those additions will be billed on a time and materials basis along with the labor necessary to install, program and setup. Components supplied by the Customer must be approved prior to scheduling upgrades. ETS does not guarantee compliance as compliance with the PCI security standard is the sole responsibility of the owner/operator of the facility. **CUSTOMER AGREES TO RELEASE, INDEMNIFY, HOLD HARMLESS, AND DEFEND ETS FROM AND AGAINST ANY AND ALL CLAIMS, LIABILITY, AND CAUSES OF ACTION AT LAW OR EQUITY ARISING OR OCCURRING FROM THE REMOVAL AND DISPOSAL OF CUSTOMER'S EQUIPMENT.**

Hardware/software compatibility. In connection with this Proposal, the parties assume that any fueling system hardware and software supplied by Customer is inherently compatible and required only routine start-up programming. If on start-up, it is discovered that the hardware and/or software is not compatible or has innate deficiencies that require additional configuration or upgrading, ETS shall be entitled to full payment of the Contract Price under the Proposal including any extra charges to complete changes to customer equipment.

Digging/excavating clause. Digging and excavating quotations are based on normal soil conditions. Should any digging or excavating be included in the ETS Proposal, and any heavy rock, shale, water frost or unusual doffing be encountered, the Proposal price shall be increased at ETS's normal labor hourly rate except that any outside contract work required shall be charged at ETS's cost plus its customary administrative charge. In the event of cave-ins, and the necessity to shore or slope hole, all associated cost with the removal of the excess soil and replacement with either sand or gravel will be considered an extra and all such cost shall be borne by Customer. In the event underground structures, cables, conduit, debris, rick, water, utilities, or running sane are encountered, destroyed or damaged during the performance of the work, ETS shall not be held responsible, and Customer shall indemnify and save harmless ETS and its contractors, agents and employees from all suits, actions, or claims brought about by such encounter, destruction or damage. Should dewatering be required, the ETS shall not be responsible for disruption of adjacent backfill materials whether known or unknown at the time of excavation, repairs to paving, concrete, structures shall be borne by Customer. ETS is not responsible for removal/disposal of waste water if de-watering of the sump is necessary. Finished grades are to be established and verified by Customer.

Tank Floating Clause. Customer shall fill all underground storage tanks installed by ETS with liquid for ballast immediately upon notification from ETS that a tank(s) has been set into an excavation ("filling notification"). ETS shall not be responsible for any contamination or loss of product used for ballast. If any tank floats after Customer receives filling notification, ETS shall not be liable for any damages to equipment, and labor and materials cost to reinstall tanks, if floating occurs, costs shall be borne by Customer.

Cold weather Concrete. In the event that concrete is poured during cold weather, ETS is not responsible for chipping, cracking, or Spaulding of concrete, due to cold weather pours. Furthermore, ETS is not responsible for additional cost of heated concrete, unless otherwise specified in the contract. It is highly recommended that salt or any chemical based deicer is NOT used for a period of at least 24 months after installation to prevent concrete related problems.

Notice of Lien Rights. As required by the Wisconsin construction lien law, ETS hereby notifies owner/customer that persons or companies performing, furnishing, or procuring labor, services, materials, plans or specifications for the construction on owner's/customer's land may have lien rights on owner/customer's land and buildings if not paid. Those entitled to lien rights, in addition to ETS are those who give the owner/customer notice within sixty (60) days after they first perform, furnish, or procure labor, services, materials, plans or specifications for the construction. Accordingly, owner/customer probably will receive notices from those who perform, furnish, or procure labor, services, materials, plans, or specifications for the construction, and should give a copy of each notice received to the mortgage lender, if any. ETS agrees to cooperate with owner/customer and owner's/customer's lender, if any, to see that all potential lien claimants are duly paid. This notice is given for purpose of identification, and is not a claim to you or your lender for payment.