

*Public Safety*

# PROFESSIONAL SERVICE AGREEMENT

This storage tank system review and inspection Agreement, is made and entered into by and between the City of Manitowoc, hereinafter called the "The City," and Tarlton Inspections, Inc., hereinafter called "Tarlton Inspections, Inc."

## RECITALS

This Agreement is established and entered into with reference to the following facts and circumstances:

- A. To carry out the **Wisconsin Department of Agriculture, Trade and Consumer Protection**, hereinafter called "ATCP," mandate pursuant to sections 101.02(15)(a) and 101.09, Statutes;
- B. For the purpose of granting Tarlton Inspections Inc., authorization to implement and enforce the provisions of the Wisconsin Administrative Code ATCP 93, and provide tank system review and inspection services as outlined in ATCP 93.050 (66), and to exercise jurisdiction over the provisions specified in ATCP 93 for, in accordance with, and subject to the policies, procedures and authority of the City, as delineated in ATCP 93.110;
- C. That Tarlton Inspections, Inc., is qualified and retains complete and current certifications to provide such services to the City of Manitowoc;
- D. And that the City of Manitowoc has elected to engage the services of Tarlton Inspections, Inc., upon the terms and conditions as hereinafter set forth.

## EXECUTION OF AGREEMENT

This **Agreement**, which is made and entered into upon the date of the Authorized signature(s) of Tarlton Inspections Incorporated; becomes effective beginning July 1, 2014, and remains in effect until June 30, 2016, unless otherwise terminated within and by the procedures specified and required herein.

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## AUTHORITY TO SIGN AGREEMENT

IN WITNESS WHEREOF,

The Parties hereto have caused this Agreement to be executed on the date established herein, by the Signatures of these Officers and /or Agents shown below, duly authorized by the respective statute, law, resolution, charter or commission, as appropriate and binding, give full and complete authority to establishing and executing this document.

### For The Fire Department, District or Organization

**Manitowoc Fire Department** Date: \_\_\_\_\_  
Todd M. Blaser, Fire Chief By : \_\_\_\_\_  
**City of Manitowoc** Date: \_\_\_\_\_  
Justin Nickels, Mayor By : \_\_\_\_\_  
**ATTEST (If Applicable)** Date: \_\_\_\_\_  
Jennifer Hudon, City Clerk By : \_\_\_\_\_  
**Approval as to Form (If Applicable)** Date: \_\_\_\_\_  
\_\_\_\_\_, City Attorney By : \_\_\_\_\_

### For Tarlton Inspections Incorporated

**Jerald L Tarlton Jr.** Date: \_\_\_\_\_  
President By : \_\_\_\_\_  
**Melissa A Tarlton (If Applicable)** Date: \_\_\_\_\_  
Vice President By : \_\_\_\_\_  
**ATTEST (If Applicable)**  
State of Wisconsin Signed or attested before me on....  
County of \_\_\_\_\_ Date: \_\_\_\_\_  
By : \_\_\_\_\_

\_\_\_\_\_  
Notary Name and Title Signed: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

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## AGREEMENT TERMS AND CONDITIONS

### 1. Scope of Services

Tarlton Inspections, Inc. will perform, as specified by DATCP, the environmental protection and fire/property/human safety provisions of ATCP 93, the Flammable, Combustible and Hazardous Liquids Code. Primary duties of Tarlton Inspections, Inc., in implementing the environmental and fire safety provisions of ATCP 93 include:

- A. Performing plan review and approval for tank systems under the scope of ATCP 93.100 for facilities with all tanks of less than 5,000 gallons. Approving/disapproving the plans, which are submitted, based upon the criteria established in ATCP 93.
  
- B. Performing Above-ground Storage Tank (AST) and Underground Storage Tank (UST) installation inspections for tank systems whose plans have been reviewed at the Commerce or Local Program Operator (LPO) level, submitting the proper documentation, and providing DATCP retail program notification:
  - i) Submitting a copy of the installation checklist to Commerce.
  - ii) Notifying the respective Bureau of Retail Petroleum Services office when final inspection has been conducted on installation or upgrade at retail sites.

*UST systems have a minimum of three on-site inspection points: 1) Pre-installation scope and planning, 2) Pipe pressure test, and 3) Pre-operational installation verification.*
  
- C. Performing the annual inspection of underground tanks for compliance with leak detection, release prevention, functional operation and maintenance established in ATCP 93 as directed by ATCP for:
  - i) "In Use" and "Temporarily out of Service" federally regulated tank systems,

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- ii) "In Use" heating oil UST's with capacity greater than 4,000 gallons,

and, designated registered "In Use" aboveground tank systems for compliance with leak detection, release prevention, operation and maintenance established in ATCP 93 as directed by ATCP for:

- i) non agricultural, non private, non retail aboveground storage tank used for vehicle fueling,
- ii) industrial, mercantile/commercial, designated government owned fleet, and schools,

D. Conduct site inspections when necessary to verify the status or existence of "Abandon" tanks in the process to bring tank closure or to assist ATCP resolve database and permit related issues.

E. Provide technical advice and information to tank system owners and operators. As used in this Section, "technical advice" means informing owners and operators of what options and procedures are acceptable. "Technical advice" shall not mean performing engineering service or guidance.

F. Conduct necessary program administration, including filing and reporting.

G. Conduct activities with local contractors and operators during hours that provide an efficient and effective program response.

I. Conduct UST closure inspections.

### 2. **Standards of Services**

Tarlton Inspections, Inc. will provide the services hereinafter set forth in accordance with the best professional standards. During the term of this Agreement, Tarlton Inspections, Inc., (including individual officers, directors or employees) shall not engage in any business regulated by the ATCP 93 Wisconsin Administrative Code including, but not limited to: installation, closure, tightness testing, cathodic protection testing, or repair of UST or AST systems.

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### 3. Performance of Services

Tarlton Inspections, Inc. will be responsible for, as specified by ATCP, and within the framework and jurisdiction of the City of Manitowoc the following:

- A. Have a sufficient number of certified inspector(s) who have successfully completed ATCP's required training and certification in order to carry out the assigned program duties under this Agreement.
- B. Maintain program records to document inspections and provide related and required information to the Manitowoc Fire Department, and to ATCP, as appropriate, including providing program reports on compliance rates, outstanding orders and performance, and:
  - i) Communicate and maintain inspection records and information on violations identified, as appropriate and required.
  - ii) Ensure that tank inventory forms are submitted to Commerce for new installations, closures or changes in ownership identified during inspections.
  - iii) Provide program support in correcting database errors, information deficiencies, etc., by investigating and researching local records, history, etc.
- C. Provide accurate program and technical information to the City of Manitowoc and to Departments, Agents and Organizations with the Municipality, as designated by the City of Manitowoc, to local residents, tank system owners and other interested parties, as appropriate.
- D. Conduct inspection activities with professionalism and courtesy in all communications and actions, and with respect for the Officers and Staff of the Manitowoc Fire Department.
- E. Have a combustible gas indicator for monitoring for flammable vapors during inspections and closures.

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- F. Consult with ATCP on questions of program interpretation. Follow Commerce program direction and interpretation. Any disagreement regarding program interpretation shall be resolved in favor of ATCP, whose interpretation is final and conclusive.
- G. Tarlton Inspections, Inc. will record and transmit to ATCP the information obtained during inspection activities conducted within the Manitowoc Fire Department jurisdiction.

The site inspections activity shall include:

- i) Internet Inspection Reporting Application (IIRA) Reporting: Annual UST and AST inspection results posting to Commerce tank database as appropriate.
- ii) Site inspection.
- iii) Compliance performance.

The site reports shall include:

- i) Identification and data of specific non compliance issues.
  - ii) Data if a Red-tag(s) is administered.
  - III) Dates that non-compliance orders were brought into compliance or resolution.
  - iv) Tank attribute data changes.
- H. Issue initial orders and follow-up actions for tank system closures required by ATCP 93 as required and maintaining documentation of all inspections and orders, including re-inspections to determine compliance with orders.
  - I. Receive original closure notices, provide approvals of closures in place if warranted by specific site conditions. Perform inspections at the closure of underground tank systems or as directed by the Manitowoc Fire Department and/or Municipal ordinance or policy, or by ATCP.

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- J. Issue enforcement orders and performing follow-up actions or investigations on violations of ATCP 93's groundwater protection and fire safety provisions, which are identified through: inspections, the plan review process, permit and registration processing, public inquiry or notice, etc. Maintain documentation of all inspections and orders, including re-inspections to determine compliance with orders.
- K. Safety assuring compliance with all applicable Statutes and Codes relating to workplace safety for Tarlton Inspections, Inc., employees.
- L. Commerce "PROHIBITS CONFINED SPACE ENTRY WHEN PERFORMING ANY WORK UNDER THE REQUIREMENTS OF THIS AGREEMENT".
- M. Tarlton Inspections, Inc., will be a deputy of the Wisconsin Department of Agriculture, Trade and Consumer Protection under the provisions of §101.02(5), Statutes, for the limited purposes of carrying out the inspection, enforcement and technical assistance functions. Tarlton Inspections, Inc., shall have authority strictly limited to the duties described above, and is not authorized to act as an agent of ATCP for any other purposes.
- N. Tarlton Inspections, Inc., is an independent Contractor with respect to ATCP, and is therefore, solely responsible for its actions and those of its employees in carrying out the functions specified under this Agreement.
- O. With respect to the provisions of the Wisconsin Administrative Code ATCP 93, ATCP has sole authority to interpret the provisions of Wisconsin and Federal Statutes and Rules relating to petroleum storage tanks and may require Tarlton Inspections, Inc., to rescind and/or re-issue any action, order, or technical advice that conflict with ATCP's interpretation.

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- 4. Additional Services**  
Only services specified in ATCP 93 are allowable within the scope of this Agreement.
- 5. Term of Agreement**  
The term of this Agreement will be from July 1, 2014 through June 30, 2016.
- 6. Termination of Agreement**  
Either Party may terminate this Agreement at any time at its sole discretion, with or without cause, by delivering written notice to the other Party. The Agreement will be terminated thirty (30) days after written notice of intent to terminate the Agreement is delivered.
- 7. Assignment of Agreement**  
Tarlton Inspections, Inc., may not sublet, sub-contract, assign to others any part of the work under this Agreement.
- 8. Governing Law**  
This Agreement shall be governed by and construed in accordance with the laws of the State of Wisconsin.
- 9. Mediation**  
Neither party shall file legal action without first meeting in mediation and making a good faith attempt to reach a mediated resolution. The costs of a mediator, if any, shall be paid equally by the parties. If a mediated settlement is reached, neither party shall be deemed the prevailing party for purposes of the settlement and each party shall bear its own legal costs.
- 10. Agreement Modification**  
This Agreement may be amended or modified only by mutual and written consent with Notice, signed by all parties.
- 11. Severability**  
If any term or provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement and the application of such term or provision to such persons or circumstances other than those as to which it is held invalid or unenforceable shall not be affected thereby, and each term or provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.



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**12. Conflict of Interest**

Tarlton Inspections, Inc., may not, in providing services, conduct inspections in a manner resulting in a 'conflict of interest' as defined by State Statute.

**13. Indemnification**

Tarlton Inspections, Inc., agrees to indemnify and hold harmless the City of Manitowoc, Manitowoc Fire Department, and its officers, and employees from and against any and all claims, demands, liabilities, costs, expenses, and causes of action of any nature whatsoever (including, without limitation, reasonable attorneys' fees) arising out of or incidental to any act performed or omitted to be performed by Tarlton Inspections, Inc., in connection with this Agreement.

**14. Preservation of Rights (Waiver)**

Failure of any party at any time to require performance of any provision of this Agreement shall not limit such party's right to enforce such provision, nor shall any waiver of any breach of any provision of this Agreement constitute a waiver of such provision itself. Any waiver of any provision of this Agreement shall be effective only if set forth in writing and signed by the party to be bound.

**15. Construction and Interpretation**

The headings in this Agreement are for convenience or reference only and shall have no effect whatsoever on the construction or interpretation of any provision of this Agreement. All provisions of this Agreement have been negotiated at arm's length, and this Agreement shall not be construed for or against any party by reason of the authorship or alleged authorship of any provision hereof.

**16. Inspection Notice**

Notice of Inspection is governed solely and exclusively by Commerce and Wisconsin Department of Agriculture, Trade and Consumer Protection Administrative Code ATCP 93 and shall be implemented as prescribed thereby, as to information, forms, methods, policies and procedures as defined, outlined or implied; and is subject to change, with or without prior notification, as deemed necessary and appropriate by ATCP.

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### 17. Agreement Notice

Notice under this Agreement shall be in writing and shall be effective when actually delivered to the addresses list in this section, or to such other address(es) and/or person(s) as either party may indicate by written notice to the other party.

#### A. USPS Mail

Upon receipt of delivery confirmation when notification documentation is deposited in the United States mail, certified, return receipt requested.

#### B. E-Mail

Upon receipt of delivery and/or 'Read' confirmation when the notification documentation is electronically transmitted via e-mail bearing an appropriate Signature, textual or digital, and the e-mail was transmitted with 'Return Receipt', 'Return Read Receipt' or other e-mail client receipt confirmation function selected.

#### C: FAX

Upon receipt of delivery confirmation by return Fax receipt confirmation sent by receiving party to sender when notification documentation is faxed.

#### D. Notice Address for Fire Department/District

**Chief Todd M. Blaser**  
**Manitowoc Fire Department**  
**911 Franklin Street**  
**Manitowoc, WI 54220-4513**

#### E. Notice Address for Tarlton Inspections, Inc.

**Jerald Tarlton**  
**Tarlton Inspections, Inc.**  
**312 W Picnic Street**  
**Shawano, WI 54166**

#### F: Notice e-mail and / or Fax

Respective e-mail and Fax numbers, as appropriate, may be communicated to the other party by any mutually agreed method without confirmation.

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**18. Relationship of Parties**

Nothing in this Agreement shall be construed to create a partnership, joint venture, employer-employee relationship, or any other relationship between the City of Manitowoc, the Manitowoc Fire Department and Tarlton Inspections, Inc., other than that of an independent contractor.

**19. Confidentiality**

Tarlton Inspections, Inc. agrees that it shall not disclose to any party, other than ATCP, any confidential or proprietary information, without prior written permission for such disclosure from the Manitowoc Fire Department.

**20. Default (Failure to Perform)**

ATCP retains sole and exclusive determination of performance of services performed under this Agreement, as delineated in ATCP 93 and as defined within the contractual relationship between ATCP and Tarlton Inspections, Inc. Any allegation of mis-conduct, negligence, etc., must first be communicated with constructive notice to Tarlton Inspections, Inc., as required by this Agreement, prior to any other action being taken by the Manitowoc Fire Department.

**21. Compensation**

ATCP expressly prohibits Tarlton Inspections, Inc., charging fees for services provided or performed under this Agreement.

**22. Insurance**

Tarlton Inspections, Inc., shall procure and maintain in force insurance at the levels indicated herein and shall deliver to the City of Manitowoc within thirty (30) days after the date of this Agreement certificates of insurance evidencing the coverage described in this Section, such insurance coverage to continue one hundred and twenty (120) days after the expiration, or termination, of this Agreement. Insurance shall be obtained from a company authorized to do business within the State of Wisconsin. The certificate of insurance shall have attached an endorsement

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naming the City of Manitowoc as an additional insured and an endorsement giving the city 30 days notice of cancellation, modification or non renewal of said insurance. The certificate of insurance and endorsements shall be submitted to the City Attorney for approval prior to rendering services.

### Commercial General Liability Coverage Insurance:

Each Occurrence Limit	\$1,000,000.00
General Aggregate Limit (Other than Products/Completed Operations)	\$1,000,000.00
Products/Completed Operations Aggregate Limit	\$1,000,000.00
Personal and Advertising Injury Limit	\$1,000,000.00
Contractors Pollution Liability Coverage-Each Condition	\$1,000,000.00
Professional Liability Coverage-Each Claim	\$1,000,000.00
Workers Compensation (Policy Limit)	\$500,000.00
Automobile Liability (Combined Single Limit)	\$500,000.00

### **23. Entire Agreement**

This entire Agreement is subject to and contingent upon the existence of a Local Program Operator (LPO) Contractual relationship between Tarlton inspections, Inc., and ATCP. The absence of such a Contract and contractual relationship or the cessation of funding for the tank system review and inspection program by ATCP, or by the State, totally and immediately voids this entire Agreement.