

CITY OF TOMBALL SERVICES AGREEMENT

THE STATE OF TEXAS

§

COUNTY OF HARRIS

§

Description of Services: Operating and Emergency Fuel Services

This Agreement is made and entered into by the **City of Tomball** (referred to as the “City”), with an office at 501 James Street, Tomball, TX and, **Senergy Petroleum, LLC** (the “Company”), with an office at **1470 N. Horne St Gilbert, AZ 85233**, City hereby engages the services of Company as an independent contractor for **Operating & Emergency Fuel Services**, upon the following terms and conditions.

1. SCOPE OF AGREEMENT

- 1.1. The City hereby agrees to employ Company and Company agrees to perform the necessary services as set forth in Exhibit A – Scope of Work and Exhibit B – Contract Pricing to provide operating and emergency fuel services to the City of Tomball, attached hereto and incorporated herein for all purposes.
- 1.2. In the event of a conflict among the terms of this Agreement and the Exhibit A, the term most favorable to the City, in the City’s sole discretion, shall control.

2. TERM OF AGREEMENT; TERMINATION

- 2.1. This Agreement shall be effective upon proper execution by the City. It shall be effective from **November 20, 2025 through November 19, 2026 with five (5) one- year optional renewal periods**. The City reserves the right to withdraw from the Agreement immediately if its governing body fails to appropriate funds necessary for the satisfaction of its contractual obligations. ***Either party may terminate this Agreement for any reason with ninety days (90) written notice to the other party.***
- 2.2. The City’s obligations under this Agreement shall not constitute a general obligation of the City or indebtedness under the constitution or laws of the State of Texas. Nothing contained herein shall ever be construed so as to require City to create a sinking fund or to assess, levy and collect any tax to fund its obligations under this Agreement.
- 2.3. The City reserves the right to enforce the performance of this Agreement in any manner prescribed by law or deemed to be in the best interest of the City in the event of breach or default of any provision of this Agreement, including immediate termination of this Agreement.

3. ENTIRE AGREEMENT

This Agreement represents the entire agreement between Company and the City and no prior or contemporaneous oral or written Agreements or representations shall be construed to alter its terms. No additional terms shall become part of this Agreement without the written consent of both parties and compliance with relevant state law. This Agreement supersedes all other prior agreements either oral or in writing.

4. ASSIGNMENT

Company shall not assign or subcontract its obligations under this Agreement without the prior written consent of the City.

5. COMPENSATION

For and in consideration of the services rendered by the Company pursuant to this Agreement, the City shall pay the Company only for the actual work performed under the Scope of Work, on the basis set forth in Attachment B, up to an amount not-to-exceed **\$600,000**.

6. MODIFICATION OF RATES

Base Rate adjustments for changes in the Consumer Price Index (CPI) will be considered by the City no more than once per year during the renewal term of the Contract, during the month of October of each Contract Year.

7. IDEMNITY

7.1. DEFINITIONS

For the purpose of this section the following definitions apply:

- a. "City" shall mean all officers, agents and employees of the City of Tomball.
- b. "Claims" shall mean all claims, liens, suits, demands, accusations, allegations, assertions, complaints, petitions, proceedings and causes of action of every kind and description brought for damages.
- c. "Company" includes the corporation, company, partnership, or other entity, its owners, officers, and/or partners, and their agents, successors, and assigns.
- d. "Company's employees" shall mean any employees, officers, agents, subcontractors, licensees and invitees of Company.
- e. "Damages" shall mean each and every injury, wound, hurt, harm, fee, damage, cost, expense, outlay, expenditure or loss of any and every nature, including but not limited to:
 - i. injury or damage to any property or right
 - ii. injury, damage, or death to any person or entity
 - iii. attorneys' fees, witness fees, expert witness fees and expenses,
 - iv. any settlement amounts; and
 - v. all other costs and expenses of litigation
- f. "Premise Defects" shall mean any defect, real or alleged, which now exists or which may hereafter arise upon the premises.

7.2. Indemnity

COMPANY AGREES TO INDEMNIFY, HOLD HARMLESS, AND DEFEND THE CITY FROM AND AGAINST LIABILITY FOR ANY CLAIMS FOR DAMAGES ARISING OUT OF THE COMPANY'S WORK AND ACTIVITIES CONDUCTED IN CONNECTION WITH THIS AGREEMENT.

COMPANY IS AN INDEPENDENT CONTRACTOR AND IS NOT, WITH RESPECT TO ITS ACTS OR OMISSIONS, AN AGENT OR EMPLOYEE OF THE CITY.

COMPANY MUST AT ALL TIMES EXERCISE REASONABLE PRECAUTIONS ON BEHALF OF, AND BE SOLELY RESPONSIBLE FOR, THE SAFETY OF COMPANY'S EMPLOYEES WHILE IN THE VICINITY WHERE THE WORK IS BEING DONE. THE CITY IS NOT LIABLE OR RESPONSIBLE FOR THE NEGLIGENCE OR INTENTIONAL ACTS OR OMISSIONS OF COMPANY OR COMPANY'S EMPLOYEES.

THE CITY ASSUMES NO RESPONSIBILITY OR LIABILITY FOR DAMAGES WHICH ARE DIRECTLY OR INDIRECTLY ATTRIBUTABLE TO PREMISE DEFECTS.

THE CITY AND COMPANY MUST PROVIDE THE OTHER PROMPT AND TIMELY NOTICE OF ANY COVERED EVENT WHICH IN ANY WAY AFFECTS OR MIGHT AFFECT THE COMPANY OR CITY. THE CITY HAS THE RIGHT TO COMPROMISE AND DEFEND THE SAME TO THE EXTENT OF ITS OWN INTERESTS.

THE INDEMNITY OBLIGATIONS HEREIN SHALL SURVIVE THE TERMINATION OF THE AGREEMENT FOR ANY REASON AND SHALL SURVIVE THE COMPLETION OF THE WORK.

8. INSURANCE

8.1. AMOUNTS OF INSURANCE

Company agrees to provide and to maintain the following types and amounts of insurance, for the term of this Contract:

TYPE	AMOUNT
(a) Workers Compensation Employer's Liability	(where required – Statutory by State Law) \$100,000 per occurrence

(b) Commercial (Public) Liability, including but not limited to:

- a. Premises/ Operations Combined Single Limit
- b. Independent Contractors
- c. Personal Injury
- d. Products/Completed Operations
- e. Contractual Liability (insuring above indemnity provisions)

All insured at combined single limits for bodily injury and property damage at \$500,000 per occurrence.

(c) Comprehensive Automobile Liability, in include coverage for:

- a. Owned/Leased Automobiles
- b. Non-owned Automobiles
- c. Hired Cars

All insured at combined single limits for bodily injury and property damage for \$500,000 per occurrence.

8.2. OTHER INSURANCE REQUIREMENTS

Company understands that it is its sole responsibility to provide the required Certificates and that failure to timely comply with the requirements of this article shall be a cause for termination of this Contract.

Insurance required herein shall be issued by a company or companies of sound and adequate financial responsibility and authorized to do business in the State of Texas. All policies shall be subject to examination and approval by the City Attorney's Office for their adequacy as to form, content, form of protection, and providing company.

Insurance required by this Contract for the City as additional insured shall be primary insurance and not contributing with any other insurance available to City, under any third party liability policy.

Company further agrees that with respect to the above required liability insurances, the City shall:

- a. Be named as an additional insured;
- b. Be provided with a waiver of subrogation, in favor of the City,
- c. Br provided with 30 days advance written notice of cancellation, nonrenewal, or reduction in coverage (all "endeavor to" and similar language of reservation stricken from cancellation section of certificate); and
- d. Prior to execution of this Agreement, be provided through the office of the City Attorney with their original Certificate of Insurance evidencing the above requirement.

The insurance requirements set out in this section are independent from all other obligations of Company under this Agreement and apply whether or not required by any other provision of this Agreement.

9. PAYMENT AND PERFORMANCE

Payment for services described in this Agreement will be made in accordance with the Texas Prompt Payment Act, Chapter 2251 of the Texas Government Code, or as subsequently amended.

10. VENUE; RECOVERY OF FEES; DISPUTE RESOLUTION; CHOICE OF LAW

Any suit or claim or cause of action regarding this Agreement shall be brought in Harris County, Texas, as the choice of venue and jurisdiction and site of performance by the parties. If the City is the prevailing party in any such action, the City may recover reasonable costs, including costs of court, attorney's fees, expert witnesses' fees, and trial consultants' fees. The parties further agree that the law of the State of Texas shall govern any interpretation of the terms of this Agreement.

11. COMPANY CERTIFICATIONS

Company certifies that neither it, nor any of its agents or employees, have or will offer or accept gifts or anything of value, or enter into any business arrangement, with any employee, official, or agent of the City.

Company certifies, pursuant to Texas Government Code Chapter 2270, that it does not boycott Israel and will not boycott Israel during the term of this Agreement. Company further certifies, pursuant to Texas Government Code Chapter 2252, Subchapter F, that it does not engage in business with Iran, Sudan, or a foreign terrorist organization as may be designated by the United States Secretary of State pursuant to his authorization in 8 U.S.C. Section 1189.

12. NO WAIVER OF IMMUNITY

The City does not waive any statutory or common law right to sovereign immunity by virtue of the execution of this Agreement.

13. NOTICES

Any written notice provided under this Agreement or required by law shall be deemed to have been given and received on the next day after such notice has been deposited by Registered or Certified Mail with sufficient postage affixed thereto and addressed to the other party to the Agreement; provided, that this shall not prevent the giving of actual notice in any manner.

Notice to Company may be sent to the following address:

Senergy Petroleum, LLC
1470 N. Horne St
Gilbert, AZ 85233

14. CONTRACT ADMINISTRATOR

This Agreement shall be administered on the City's behalf by the Project Manager, and all notices, questions, or documentation, arising under this Agreement shall be addressed to the Project Manager at:

City of Tomball, Texas
Attn: Project Manager
501 James Street
Tomball, Texas 77375

AGREED to and ACCPETED this 28 day of August, 2025.

Senergy Petroleum, LLC
Company

Katie Atencio
Signature

Katie Atencio
Print Name

Contract Specialist
Title

AGREED to and ACCPETED this ____ day of _____, 2025.

City of Tomball

David Esquivel, PE
City Manager

Attest:

Thomas Harris III
City Secretary

EXHIBIT A SCOPE OF WORK

I. General

The City of Tomball is requesting sealed proposals to contract for fuel services for operating and emergency services. The City reserves the right to accept or reject any/all of the proposals received and/or purchase from any State contractor and/or inter-local agreement.

The term of the awarded contract, if any, will be for a one (1) year period and will become effective upon the contract award date. The contract may be renewed for five (5) additional one-year periods upon written agreement and mutual consent of both parties. Any renewal must be approved by the City of Tomball City Council.

II. Requested Services/Products

- a. Location
 - i. City of Tomball Public Works Services Center, 501 James Street, Tomball, Texas 77375
- b. Fuel Types
 - i. Midgrade 89 Octane Gasoline
 - ii. TXLED High Sulfur Diesel
 - iii. TXLED Low Sulfur Diesel
- c. Tank Information
 - i. Number of tanks: 3
 - 1. Tank One (Pump 1): On-Road Diesel – 4,000 gallons
 - 2. Tank Two (Pump 2): Off-Road Diesel – 2,000 gallons
 - 3. Tank Three (Pump 3): Unleaded Gasoline – 6,000 gallons

III. Contract Stipulations

Proposals submitted must include pricing for furnishing fuel to the City of Tomball based on the requirements indicated on Exhibit B – Cost Proposal. By submission of a proposal, the successful vendor agrees to the following stipulations:

- a. Delivery of fuel is to be completed no later than the next day after the order is placed.
- b. For quality assurance reasons, fuel is to be supplied from EPA approved terminals.
- c. Prices quotes should exclude sales tax and Federal excise tax (FET). The City is exempt from these taxes and will provide Exemption Certificates to the successful proposer. Successful vendor's invoices shall include applicable fuel tax, State GPA loading fees, and Federal Superfund Taxes.

d. Posted Terminal Rack Prices

- i. Vendor is to guarantee that when invoicing, this part of the price is the posted terminal rack price at the terminal from which the fuel is supplied, the day the fuel is delivered. Vendor is also to indicate on each item, as part of their proposal, their price for delivery, their price for profit, and their price for loading fees.

e. Invoicing

- i. Fuel is to be billed in net gallons. A copy of the supplying terminal's bill of loading is to be attached to the invoice.

f. Vendor will have an adequate supply for emergency fueling for the main fuel complex located at 501 James Street, or other location as designated.

g. Customer Service

- i. Please state the name of the vendor contact, how they may be contacted, and at what times. Describe whether, and to what extent, after hours customer service is available. Please list the typical time for a response/contact with a real person who can assist.
- ii. Additionally, would this person be the point of contact for emergency situations, if different please explain.

h. Emergency/Disaster

In the event of an emergency, Vendor shall agree to top off all City tanks no less than 24-48 hours prior to an anticipated event. In order to provide the most effective response to an emergency, the City will order fuel before the emergency (i.e. tropical storms or hurricanes). In addition, to ensure economic recovery to the City and community, the City will need emergency deliveries after the disaster.

The selected Vendor will be required to provide these services to the City. With the RFP submission, each Vendor shall:

- i. Describe what preferential treatment and guarantee of service is available to the City of Tomball during a declared disaster or other emergency situation. Describe what resources you can offer to the City in such event. Selected Vendor will be required to provide fuel delivery during a declared disaster or other emergency situation.

j. Insurance and Bonding

- a. List your relevant insurance coverage and bonds covering the activities of the Vendor, if any.

k. Other services

- a. List other goods and/or services similar to those requested under this RFP that the Vendor offers. You are welcome to list other benefits and

advantages that the Vendor can provide to the City that are not specifically asked for herein.

I. Contract Period and Renewal Option

- a. The term of this contract will be for an initial two (2) year period and will become effective from the date of contract execution and will expire two (2) years from the start date. The contract may be renewed for two (2) additional two-year periods upon written agreement and mutual consent of both parties.
- m. Any exceptions to the above should be noted with appropriate pricing, size and/or other differences cited.

IV. Terms and Conditions

Proposers are requested to furnish the items described herein in accordance with the terms set forth. All proposals must be Freight on Board (FOB) Destination and include the cost of cartage to the delivery point as stated on this form.

In the case of default, the City of Tomball, reserves the right to hold the original proposer or contractor liable for any and all resulting increased costs.

Samples, if requested by the City of Tomball, must be furnished at the proposer's expense, and if not destroyed in testing or retained as a standard, will be returned on the same terms, if requested by the proposer. Proposer shall submit quality control tests at Proposer's expense when requested by the City of Tomball.

Proposals may be withdrawn on written or telegraphic request received from proposers prior to the time set for opening. Negligence on the part of the responder in preparing the proposal confers no right for the withdrawal of the proposal after the hour fixed for the opening.

Any oral statement by any representative of the City, modifying or changing any conditions of this contract, is an opinion only and confers no right upon the seller.

All discounts, if applicable, shall be shown in discount amount space provided on data sheets – EXCEPT IN TERMS FOR PROMPT PAYMENT.

If a delay in delivery as specified on the purchase order is foreseen, supplier shall give written notice to the Public Works Department immediately. The City has the right to extend the delivery date if reasons appear valid. Suppliers must keep the City advised at all times of the status of order. Default in promised delivery (without accepted reasons) or failure to meet specifications, authorizes the City of Tomball to purchase material elsewhere and charge a full increase in cost and handling to the defaulting supplier and could also be reason for

cancellation of the Purchase Order and contract at no expense to the City if the City deems it necessary.

Deliveries must be made within twenty-four (24) hours after an order is placed. The city shall be a priority customer during emergency situations to ensure delivery within 24 hours of order. Off-loading shall not take place unless a City employee is on site to accept delivery and verify meter readings on fuel truck. Extreme care must be exercised by the vendor, its agents or employees, to avoid fuel spills. The tanker truck must be attended at all times during the fuel off-loading. Any cost incurred as a result of fuel spills due to negligence on the part of the vendor, its agents or employees, or due to equipment malfunction, will be borne by the furnishing company and may be grounds for termination of the contract at the City of Tomball's discretion. Products do not require nationally distributed brand names (i.e. Chevron, Mobil, Texaco), however specifications may reference brand names. It is not the intent of the City of Tomball to restrict these proposals in such cases, but to establish a desired quality level of merchandise or to meet a pre-established standard due to like existing items. Vendors may offer items of equal stature and the burden of proof of such stature rests with the vendor. The City of Tomball shall act as the sole judge in determining equality and acceptability of products offered. The City reserves the right to conduct random testing of said products, or to have such tests conducted on their behalf, to verify that the products delivered are the same as the products' proposal. The City shall not accept substandard fuel. The City of Tomball reserves the right to have samples of the gasoline and diesel fuel deliveries analyzed by an independent laboratory, three (3) times during the contract period, at the vendor's expense, as requested. All tests will be made according to ASTM (American Society for Testing and Materials) test methods. Any fuel not conforming to these specifications shall be rejected and it will be the responsibility of the vendor to conform to the requirements unless deviations have been specifically cited by the vendor and acceptance made on the basis of the exception. The apparent silence of these specifications as to any detail or apparent omission of a detailed description concerning any point, shall be regarded as meaning that only the best commercial practice is to prevail; and that only material and workmanship of the finest quality are to be used. All interpretations of these specifications shall be made on the basis of this statement. The City of Tomball will in no way be bound to purchase any predetermined amounts under this contract.

Price Redetermination: The City of Tomball will permit "Unit Price" adjustment on the at renewal of the contract. Request for a unit price change must be submitted in writing to the Project Management Office, 501 James Street, Tomball, Texas 77375. The contractor shall provide documentation and justification as to reason for price redetermination. Price redetermination will be reviewed and based on reasonability sent to the City Council for final consideration and approval. The City will be allowed up to thirty (30) days to review request.

If either party disapproves of unit price adjustment the City or the Contractor shall have the right to cancel the contract with a thirty (30) day written notice.

Successful proposer shall be required, upon delivery, to pump all fuel from containers into the storage tanks identified by the City of Tomball. It is the responsibility of the successful proposer to supply pumps, hoses or whatever is needed to appropriately pump the fuels to the storage tanks.

All products proposed and delivered must meet or exceed specifications, including Federal and State regulations and requirements stated in the RFP – Operating & Emergency Fuel Services. Proposers should include the State of Texas Fuel Tax on gasoline, the Underground Water Protection Act Fee, freight charges, any other operational expenses and the proposer's margin. Do not include Federal Excise Tax on fuel, as this agency is exempt.

The City of Tomball reserves the right to award contract(s) to one or more Vendor(s) as deemed best interest of the City of Tomball.

V. Proposal Format

The following information shall be submitted in your proposal in the order listed below. Failure to submit the required information could render the submitted proposal as non-responsive. To be considered, prospective Vendors must submit a complete response as required by the RFP. Vendors must submit evidence of their ability to provide complete, thorough and comprehensive responses, and information for each of the following components of the RFP.

- a. Company Overview
 - i. A brief summary of history and experience.
 1. Where is the company headquarters?
 2. Where is your service center located?
 - ii. Include any litigation your company has been involved in over the last five (5) years.
 - iii. Include a description of the quality of service your company provides.
 - iv. Provide information on tank monitoring/recording capabilities, if the City were to implement.
- b. Comprehensive Emergency Fueling Plan Program
 - i. Detail the deliverables, program, and related costs of providing emergency fuel and services during an emergency event (hurricane, tornado, freeze, etc.).
- c. RFP Response Addenda
 - i. Completed proposal and/or addendums issues. Include all required forms.
- d. References

- i. Submit three (3) current Texas customers, preferably cities of comparable size. Include entity name, address, phone number, and email of contact person.
- e. Descriptive Literature
 - i. Illustrative brochures, specification sheets, descriptive information, diagrams, etc., that provide additional information regarding areas addressed.
 - ii. Provide information on any other service your company provides, if any.
- f. Rates & Fees
 - i. Include billing rates completed on Exhibit B – Cost Proposal.

**EXHIBIT B
COST PROPOSAL**

Midgrade 89 Octane Gasoline

Rack Rate	Profit	Differential (indicate if differential is + or -)	Loading Fee	Minimum Delivery	Brand
\$ 2.4929/gal (min. 89 Octane)	See differential /gal	\$+.0707/gal	\$ 3.45	500 gal minimum for each product and 4001 gal minimum per delivery	Unbranded

TXLED High Sulfur Diesel

Rack Rate	Profit	Differential (indicate if differential is + or -)	Loading Fee	Minimum Delivery	Brand
\$2.6494	See differential				
	+	\$ +.0907	\$ 3.45	Same as gas	Unbranded

TXLED Low Sulfur Diesel

Rack Rate	Profit	Differential (indicate if differential is + or -)	Loading Fee	Minimum Delivery	Brand
\$2.6544	See differential				
		\$ +.0907	\$ 3.45	Same as gas	Unbranded

EMERGENCY PREPAREDNESS PLAN

In the event of an emergency, Vendor shall agree to top off all City tanks no less than 24 hours to 48 hours prior to an anticipated event, such as expected hurricane landfall, etc.

EMERGENCY OPERATIONS DELIVERIES

In order to provide the most effective response to an emergency the City will order fuel (midgrade and diesel) before the emergency (i.e. tropical storms, hurricanes, etc.)

In order to ensure economic recovery to the City and community, the City will need emergency deliveries after the disaster. Mark the box below if your company will provide this service to the City.

☒ YES

☐ NO

EMERGENCY EQUIPMENT

In order to ensure economic recovery to the City, the City may have a need for portable fueling tanks with pumps. Can your company provide this service, and is your company willing to provide this service? Mark the box below.

☒ YES

☐ NO

Any Other Applicable Services Fees

Service	Please see attached price sheet for	Portable Fueling Tanks and/or Pumps	Equipment Service calls	Tank Monitoring with loaned equipment agreement		
Cost	rentals	\$ Please see attached	\$ 200 per hr plus parts	\$ 0	\$	\$

Prices listed above are good for 90 calendar days after receipt of proposal

Signature: Katie Atencio

Name: Katie Atencio

Date: 7/14/2025